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ACTS

OF THE

FIRST GENERAL ASSEMBLY

OF THE STATE OF

MISSOURI,

PASSED AT THEIR SECOND SESSION,

BEGAN AND HELD AT THE TOWN OF

ST. CHARLES,

ON MONDAY, THE FIFTH DAY OF NOVEMBER,

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND TWENTY ONE, AND OF

THE INDEPENDENCE OF THE UNITED STATES THE FORTY SIXTH.

ST. CHARLES,

PRINTED BY ROBERT M'CLOUD,

Printer to the State.

1822.



ACTS
OF THE
SECOND SESSION OF THE
FIRST GENERAL ASSEMBLY
OF THE
STATE OF MISSOURI.

ALEXANDER M'NAIR, *Governor*,
WILLIAM H. ASHLEY, *Lieut. Governor and President of the Senate.*
HENRY S. GEYER, *Speaker of the House of Representatives.*

CHAP. I.

AN ACT changing the terms of the Circuit Court, in the County
of St. Louis

Be it enacted by the General Assembly of the State of Missouri, That the terms of the Circuit Court in the County of St. Louis, shall from and after the passage of this act, be begun and holden on the first Mondays of February, June and October; and all suits or process made returnable to the next term as heretofore established, shall be returnable to the first term by this act prescribed, and all sales of real property, on or by virtue of any execution, order or decree, whereof notice may have been given according to law, shall be postponed to the first term to be holden by virtue of this act.

Terms of the
court, 1st mon-
day Feb. June
and October.
Process.

Sale of real
property post-
poned.

Approved, November 15th, 1821.

CHAP. II.

AN ACT authorizing the Circuit and County Courts, in the County of Boone, to be removed from the town of Smithton to the town of Columbia, in said County.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the Circuit and County Courts for the County of Boone, shall hereafter be holden in the town of Columbia in said County on the days and times now fixed on by law for holding said Courts in said county of Boone.

Circuit and
county courts
to be held at
Columbia.

SEC. 2. *Be it further enacted,* That any sales of real, personal or mixed property which may be advertised for sale by the sheriff or other officer of said county, by vir-

Property ad-
vertised for
sale at Smith-

ton, to be sold at Columbia, tue of order or decree of the Circuit or County Court of said county, or justice of the peace, it shall be lawful for said sheriff or other officers to make said sales in the town of Columbia, at the same time said sales would have been holden in the town of Smithton, had not this act been passed.

Former act repealed.

SEC. 3. *Be it further enacted*, That so much of an act entitled, "an act defining the limits of Howard county, and laying off new counties within the limits of said county as heretofore defined," approved sixteenth November eighteen hundred and twenty, as is inconsistent with this act be, and the same is hereby repealed. This act shall be in force from and after the twentieth day of November, eighteen hundred and twenty-one.

Approved, November 15th, 1821.

CHAP. III.

AN ACT for the relief of John Findley, and for establishing the bridge across Joachim Creek, in the county of Jefferson, a toll bridge.

Preamble.

WHEREAS, it appears by sundry documents, exhibited by John Findley, that the said Findley has paid a considerable sum of money out of his own funds, for the erection of a bridge over Joachim Creek, near the town of Herculanum: Therefore,

J. Findley's accounts to be settled by the county court of Jefferson.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That the County Court of the county of Jefferson is hereby authorized to liquidate and settle the accounts of the said John Findley, one of the trustees of the Herculanum bridge, and if upon examination and investigation of said accounts, it should appear to the satisfaction of the said court, that the said John Findley has expended money out of his own funds, and over and above the amount of subscriptions; received by him, the court are hereby authorized to order the payment of so much money as they may consider due to the said John Findley, out of the funds of the treasury of the said county of Jefferson, at such time and in such manner as they may think proper.

To be paid out of the county treasury.

County court may establish a toll bridge, to continue till county is reimbursed.

SEC. 2. *Be it further enacted*, That the said county court of the county of Jefferson, may at any time when they think the same expedient, constitute the said Herculanum bridge which is now erected over Joachim creek, a toll bridge, with full power to establish such rates and tolls as they may think proper, until the amount so paid out of the county treasury shall be reimbursed with interest, and no longer: *Provided nevertheless*, That the

said court shall not have power to make any person pay any toll for crossing said bridge, who may have been a subscriber for the building the same, and who actually paid his subscription for the building the said bridge.

Subscribers
for building
bridge, exempt
from paying
toll.

SEC. 3. This act shall take effect and be in force, from and after the passage thereof.

Approved, November 24th, 1821.

CHAP. IV.

AN ACT requiring persons who petition the General Assembly for the passage of a law or laws which may effect the rights and privileges of other persons to give certain notices before such petitions are finally acted upon.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That no petition or petitions shall, after the end of this session of the General Assembly, be finally acted upon, which prays for the change of county lines, the erection of new counties, or the removal of the seat of justice in any county, or which may effect the rights and interests of any person or persons, unless such petitioner or petitioners shall give three weeks notice in some newspaper printed in this state, at least two months before such person or persons shall present their petitions or petition to the General Assembly. This act shall be in force from and after the passage thereof.

Time & man-
ner of giving
notice.

Approved, 1st December, 1821.

CHAP. V.

AN ACT authorising the administrator of John Daile to settle said estate with the county court of Ralls.

SEC 1. *Be it enacted by the General Assembly of the State of Missouri,* That the adm'r. of the estate of John Daile, deceased, is hereby authorised and empowered to obtain from the clerk of the county court of Saint Charles, at his own expense, a copy of all the papers and proceedings heretofore had in said case, and on filing them with the clerk of the county court of Ralls county he may have appraisers appointed, and may make final settlement, and be subject to like proceedings in said county of Ralls as he would have been in the county of St. Charles, if this act had not have been passed. This act shall take effect from and after the passage thereof.

Adm'r. may
obtain copy of
papers & pro-
ceedings in St.
Charles, & file
with clerk of
Ralls.

May appoint
appraisers and
make final set-
tlement in
Ralls.

Approved, 1st December, 1821.

CHAP. VI.

AN ACT supplementary to an act entitled an act to license and regulate retailers of wines and spirituous liquors:

SECTION I. *Be it enacted by the General Assembly of the State of Missouri,* That it shall and may be lawful for any free white person to retail whiskey, in quantities not less than a quart at one time, at any place in this state, which shall be at least three miles from any town or village, without procuring a license therefor, any thing in the act to which this is a supplement to. the contrary notwithstanding. And so much of the act to which this is a supplement as is contrary to the provisions of this act, shall be and the same is hereby repealed. This act shall take effect and be in force from and after the passage thereof.

Approved, 1st December, 1821.

CHAP. VII.

AN ACT to authorise the administrator of Thomas Brady to sell and convey real estate to pay the debts of the deceased, and for other purposes therein mentioned.

Preamble.

WHEREAS, it has been represented to this General Assembly by John Rice Jones, administrator of Thomas Brady, late of the county of St. Louis, that the said deceased, at the time of his death, being possessed of a considerable real and personal estate, left a widow and four children, the oldest under six years and the youngest only one week old. That the personal estate is not sufficient by several thousand dollars to pay off and discharge the debts of the deceased, and that the said John Rice Jones (who is the maternal grandfather of the said children) was anxious, in order to promote the welfare and interest of his grandchildren, that the most prompt and efficacious methods should be resorted to for the payment of those debts, and thereby prevent the necessity of having the real estate of the dec'd. sacrificed at forced sales under executions, wherefore he prayed for the passage of a law authorising him, as such adm'r. to sell and dispose of so much of the real estate left by the deceased, as will be sufficient to pay the said debts, in which case he, the said John Rice Jones guaranteed that a considerable surplus will be saved for the support and maintenance of the children, who otherwise may be reduced to want and penury. And it appearing to this General Assembly that the said Thomas Brady, a short time before his death, signified his wish by letter to the said John Rice Jones,

that he, the said John Rice Jones, should take the management of his affairs. And, also, that it will be for the interest of the widow and children of the deceased that the prayer of the said petition should be granted:

SECTION 1. *Be it therefore enacted by the General Assembly of the State of Missouri,* That the said John Rice Jones, administrator of the goods and chattels, rights and credits, which were of the said Thomas Brady, at the time of his decease, be and he is hereby authorised and empowered to sell and dispose, by public or private sale, to the best advantage, of all or any of the lots, lands, tenements or hereditaments which the said Thomas Brady died seized, possessed of, or entitled unto, as will, from the proceeds of such sales, be sufficient to pay off and discharge the debts which were justly due and owing by the said Thomas Brady, at the time of his decease; and, on receipt of the consideration money therefor, to convey to the purchaser or purchasers thereof, his, her and their heirs and assigns forever, by deed or deeds, reciting this act, all the right, title, claim and interest which the said Thomas Brady, at the time of his decease, had, of, in or to the said lots, lands, tenements and hereditaments; which deed or deeds being duly proved or acknowledged, and recorded as other deeds, shall be as valid and effectual in law, to all intents and purposes, for the conveying of all the right, title and interest of the said deceased of, in, and to the said lots, lands, tenements and hereditaments so sold, as if the same species of conveyance had been executed and delivered by the said deceased in his lifetime: *Provided however,* That such sale or sales shall not be made on any longer term of credit than one year from the date of the letters of administration granted to the said John Rice Jones: *And provided also,* That the said John Rice Jones shall not, either directly or indirectly, become the purchaser of any part of the real estate sold by virtue of this act, and that when he makes a deed for any of the real estate so sold, he shall make oath that he is neither directly or indirectly interested in the purchase thereof, or of any part thereof, nor has the same been purchased for his benefit or use.

SEC. 2. *And be it further enacted,* That the said John Rice Jones, the said administrator, shall lay out and pay all the monies arising by such sale or sales, towards the discharge and payment of the debts justly due and owing by the said Thomas Brady at the time of his decease, and shall also duly account for the same in a due course of ad-

Adm'r. to sell
real estate to
pay debts of
deceased.

To make con-
veyances.

No longer cre-
dit than one
year.

Not to become
purchaser.

To account
for proceeds.

ministration. This act shall be in force from and after the passage thereof.

Approved, 1st December, 1821.

CHAP. VIII.

AN ACT concerning Wills and Testaments.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That every person aged twenty one years or upwards, being of sound and disposing mind, and not a married woman (unless by marriage settlement or special authority of the husband in writing, executed before the marriage entered into, power is given to the wife to make a will) shall have power at his or her will and pleasure by last will and testament in writing to devise his or her estate, right, title and interest in possession reversion or remainder, which he or she, at the time of his or her death, shall have of, or in and to lands, tenements, hereditaments, annuities or rents, charged upon or issuing out of them, or slaves, and also to bequeath his or her personal estate, so that such will and testament be signed by the testator or testatrix, or by some other person in his or her presence, and by his or her direction, and moreover such will and testament shall be attested by two or more competent witnesses, subscribing their names to such will and testament in presence of the testator or testatrix, saving to the widow of such testator her legal right of dower, in such lands and tenements, rents and annuities, which shall not be prejudiced by any devise thereof.

Who may
make a will.
Disposing of
real estate.

Of personal es-
tate.

SEC. 2. *Be it further enacted,* That any person above the age of eighteen years, being of sound and disposing mind, shall be capable of disposing of his or her goods and chattels by will, executed in the manner prescribed by the preceding section.

How wills
may be revo-
ked.

SEC. 3. *Be it further enacted,* That no will in writing, or any devise or bequest therein, shall be revoked by any subsequent will, codicil or declaration, unless the same be in writing, and executed in the same manner before prescribed, with respect to wills and testaments, and no devise so made, or any clause thereof shall be revocable, but by the testator or testatrix, destroying, cancelling or obliterating the same, or causing it to be done in his or her presence, by a subsequent will, codicil or declaration in writing as aforesaid.

SEC. 4. *Be it further enacted,* That when any person shall make his or her last will and testament, and omits to

mention the name of any child or children, if living, or the legal representatives of such child or children, or afterwards shall marry or have a child, or children, not provided for in such will, and die leaving a widow and child, or either widow or child, although such child be born after the death of the father, every such person so far as shall regard the widow, or such child or children, shall be deemed to die intestate, and such widow, child or children shall be entitled to such proportion, share and dividend of the estate, real and personal, of the deceased, as if he or she had actually died without will; and towards raising such proportions, the devisees and legatees shall contribute proportionably out of the part devised or bequeathed to them by the same will and testament; and for the recovery thereof, the circuit court shall have power upon petition of the party entitled thereto, and due notice given to the legatees and devisees, executors or administrators interested, to order and decree a distribution of such estate according to the provision: And if the devisees or legatees, or either of them, shall refuse to pay their due proportion according to such decree, the party may have a *scire facias* against them for the same, and on the return of the first execution, or the second "*nihil*" it shall be the duty of the court, (unless good cause to the contrary be shewn) to enter judgment against such devisee or legatee, and issue execution for the same.

Testator omit-
ing to name a
child deemed
to die intestate

Devisees to
contribute.

Circuit court
to decree a
distribution.

SEC. 5. *Be it further enacted*, That no *nuncupative* will shall be established, unless it be made in the time of the last sickness of the deceased, at his habitation or where he resided ten days preceding; except when the deceased is taken sick from home and dies before he returns to his habitation; or when the value exceeds two hundred dollars, and unless it be proved by two witnesses, that the testator called upon some person present to take notice, or bear testimony that such is his will, or words to the like import; and after six months passed after speaking the pretended testamentary words, no testimony shall be received to prove any *nuncupative* will, except the said testimony or substance thereof were committed to writing within thirty days after the making of the said will, either by one of the witnesses to said will, or by some person at his or her direction: *Provided*, That any mariner, or person being at sea, or soldier being in actual military service, may dispose of his wages or personal property, as he could or might have done by common law, or by reducing the same to writing.

Nuncupative
wills how es-
tablished.

SEC. 6. *Be it further enacted*, That it shall be the du-

County court
in term time,
and in vacation
take proof of
wills

Will to be pro-
ved in term
time or in vaca-
tion

How granted

Manner of
proving wills
when witness
is unable to
attend

ty of the county courts in term time, and the clerks thereof in vacation, subject to confirmation or rejection of the court, to take the proof of last wills and testaments. If the testator shall have a mansion house, or known place of abode in any county, his will shall be proved before the county court or clerk of such county; if he has no such place of residence, and lands be devised in the will, it shall be proved in the county wherein the lands lie, or one of them, if they be in different counties, and if he has no place of residence, and there be no lands devised, the will shall be proved in the county in which the testator lies, or if he dies out of the state, then in any county.

Sec. 7. *Be it further enacted,* That no letters testamentary, or probate of any *non-cupate* will, shall be granted until at least fourteen days after the death of the testator be fully expired, nor shall any *non-cupate* will, be at any time received to be proved, unless the substance thereof be first committed to writing, and a citation be issued thereon, accompanied with a copy thereof, to call the widow or next of kin of the deceased, to the end, that they may test the same if they please.

Sec. 8. *Be it further enacted,* That when any will shall be produced before any county court or clerk for probate, and any witness shall be prevented by sickness from attending, or resides out of the state, or more than sixty miles from the place where the will is to be proved, such court or clerk may issue a commission, annexed to such will and directed to any judge or justice of the peace, or mayor, or other chief magistrate, empowering him to take and certify the attestation of such witnesses; and if such witness shall appear before the officer so authorized and make oath or a affirmation, that the testator signed and published the writing annexed to such commission as his last will and testament, or that some other person signed it, by his direction, that he was of sound and disposing mind, that the witness subscribed his name thereto in presence of such testator, and at his request, and in the presence of the other subscribing witnesses; and the testimony so taken shall have the same force as if it had been taken before the court or clerk issuing the commission.

Sec. 9. *Be it further enacted,* That all wills and testaments whereof probate is made as aforesaid, shall be recorded in the office of the clerk of the county court, in a book to be by him kept for that purpose, within thirty days after probate; and if lands be devised in such will, the same shall be recorded in the recorder's office of the county in which such lands lie, or if they lie in different

counties, then in each of such counties within six months after such probate.

SEC. 10. *Be it further enacted*, That when any will shall be exhibited to be proved, the court or clerk having jurisdiction thereof, may immediately receive proof thereof, and grant a certificate of such probate, or if such will is rejected, grant a certificate of such rejection; and, however, any person interested shall within five years thereafter appear, and by his petition to the circuit court of the proper county, contest the validity of any will proved, or pray to have any will proved, which has been rejected, an issue shall be made up, whether the writing produced be the will of the testator or not, which issue shall be tried in the said court by a jury, if either party require it, or by the court, and the verdict of the jury, or the judgment of the court, shall be final as to the facts, saving to the court the right of granting a new trial as in other cases, and to either party an appeal in matters of law to the supreme court, as in other cases; but if no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, saving to infants, married women, persons absent from the United States, and territories during the whole of the said five years, or of unsound mind, a like period after their respective disabilities are removed.

Validity of
wills, in what
manner con-
tested.

SEC. 11. *Be it further enacted*, That authenticated copies of wills, proved according to the laws of any of the United States or territories, or country where the same is made, with the probate thereof annexed or endorsed, being attested by the public or common seal of the court or office where the same have been granted and recorded, shall be good and available in law, for the granting, conveying and assuring of the lands and tenements thereby given or devised, as well as goods and chattels thereby bequeathed; and the copies made as aforesaid, other than copies and probates of such wills as shall appear to be annulled or disproved, shall be recorded as required in case of wills executed and proved within this state, and shall be as good and valid to all intents and purposes, as if executed and proved within this state, and shall be admitted in evidence as such: *Provided*, That any such will may be contested, disproved and annulled, within the same period, and in the same manner as prescribed by this act, respecting wills proven in this state.

Authenticated
copies of wills
from other
states to be
admitted in e-
vidence in
this state.

SEC. 13. *Be it further enacted*, That all courts and others concerned in the execution of last wills and testaments, shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all

Direction of
will to be re-
garded.

matters and things that shall be brought before them, concerning the same.

SEC. 14. This act shall take effect and be in force from and after the first day of January next, and all acts and parts of acts within the purview and meaning of this act, shall be and the same are hereby repealed.

Approved, 1st December, 1821.

CHAP. IX.

AN ACT for the relief of Micajah Stone.

Preamble.

WHEREAS, it appears to the present General Assembly, that Micajah Stone, collector of Madison county, did not receive from the clerk's office of said county, until the twentieth day of November, one thousand eight hundred and twenty one, the assessor's list for the collection of said taxes, to enable said Stone to collect and pay into the treasury of this state, the amount of taxes so by him to be collected, for remedy whereof,

Further time
of 3 months
allowed to pay
taxes of 1821.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the further time of three months is given to Micajah Stone, collector of the tax list of the county of Madison, for the year one thousand eight hundred and twenty one, to collect said taxes: *Provided,* That the said Micajah Stone will collect and pay over all monies now due, or may hereafter become due, and uncollected in the said county of Madison, into the treasury of this state, agreeable to the provisions of this act.

Approved, 3d December, 1821.

CHAP. X.

AN ACT authorizing the administratrix of Isaac Robinson, late of Saint Charles county, deceased, to sell and convey a certain tract of land.

Preamble.

WHEREAS, the said Isaac Robinson, some time before his death, which happened on the ninth day of May last, purchased of a certain Noel St. Hebert a tract of land, containing two hundred and forty eight arpens, situated in the county of Saint Charles, for which he bound himself to pay the sum of eight hundred and thirty six dollars, and had actually paid, before his death, the sum of one hundred and fifty dollars. That the said Noel St. Hebert is also dead, and that his heirs and representatives are willing to rescind and annul the contract so made, with the said Isaac Robinson, and have entered into an agreement with the said administratrix for that purpose,

in case she should be authorized by a special act of the General Assembly so to do, and to refund the sum of seventy five dollars, part of the sum of one hundred dollars, received as part of the purchase money. And it appearing to the General Assembly, that it would conduce much to the interest of the four minor children of the deceased, that the conditional contract entered into between the administratrix and the heirs and representatives of the said Noel St. Hebert should be carried into effect, inasmuch as in these distressed times it is not probable that the said tract of land, and the little personal estate left by the deceased Isaac Robinson, would, on a sale under execution, sell for near as much, as the balance due by him of the consideration money agreed to be given by him for the said tract of land:

SECTION 1. *Therefore be it enacted by the General Assembly of the State of Missouri,* That Therese Robinson, administratrix of all and singular the goods and chattels, rights and credits, which were of the said Isaac Robinson, at the time of his death, be and she is hereby authorized and empowered to carry into effect the aforesaid conditional contract, as above mentioned, and to convey to the said heirs and legal representatives of Noel St. Herbert, deceased, when they shall secure the payment of the aforesaid sum of seventy five dollars, as specified in said conditional contract, the said tract of land, so by the said Isaac Robinson purchased of the said Noel St. Hebert, by deed (reciting this act,) all the right, title, claim and interest which the said Isaac Robinson had of, in, and to the said tract of land, at the time of his death, and all the right, title, claim and interest which she may have of, in, and to the same, in her own right; which deed being duly proved or acknowledged, and recorded as other deeds are, shall be as valid and effectual in law, to all intents and purposes, for the conveyance of all the right, title and interest of the said Isaac Robinson, deceased, to the said tract of land, to the said heirs and legal representatives of Noel St. Hebert, as aforesaid, their heirs and assigns forever; as if the same species of conveyance had been executed and delivered by the said Isaac Robinson in his life time: *Provided always nevertheless,* That the children of the said Isaac Robinson shall, within five years after they respectively arrive at the age of twenty one years, have the right of setting aside the said conveyance for fraud or mistake, so far as it relates to themselves respectively: *And provided also,* That the said heirs and legal representatives of said Noel St. Hebert, shall, at the time of receiving the said deed of conveyance, deliver up to the said administratrix, the securities and obliga-

Adm'x. to carry into effect the conditional contract with heirs of Noel St. Hebert and convey the real estate.

Conveyance may be set aside for fraud or mistake.

Obligation to be delivered up.

tions which the said Isaac Robinson, in his life time, gave and entered into for the payment of the balance of the consideration money agreed to be given for said tract of land, and release and discharge the said administratrix, and the children of the said Isaac Robinson, deceased and his said estate, and all and every of them, from all claims and demands on account thereof or of the said purchase.

Adm'x. to ac-
count. SEC. 2. *Be it further enacted*, That the said Therese Robinson, administratrix as aforesaid, shall account for the said sum of seventy five dollars, to be received from the said heirs and legal representatives of said Noel St. Hebert, and settle for the same in a due course of her administration of the estate of the said Isaac Robinson, deceased, her late husband. This act shall take effect and be in force from and after its passage.

Approved, 3d December, 1821.

CHAP. XI.

AN ACT imposing a tax on licences to venders of Merchandize and Pedlers.

Who deemed
a vender of
merchandize.
And who a
Pedler.
SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That every person who shall deal in the selling of any goods, wares or merchandize, at any store, stand or place occupied for that purpose, except such as are the growth, produce or manufacture of this state, shall be deemed, and is hereby declared, to be a vender of merchandize; and any person who shall deal in the selling of any goods, wares or merchandize, except such as are the growth, produce or manufacture of this state, by going from place to place to vend and dispose of the same, shall be deemed to be, and is hereby declared to be, a pedler of merchandize, within the meaning of this act.

To obtain a
license on the
1st Feb'y. SEC. 2. *Be it further enacted*, That every vender or pedler of merchandize, who now has a license as a retailer or pedler of merchandize within this state, under the existing law, if he continue to be a vender or pedler of merchandize, at the expiration of the time limited in such license, and every such person who, not being licensed as aforesaid, shall, on the first day of February next, be a vender or pedler of merchandize as aforesaid, and every person who after the said day shall become, or intend to become, a vender or pedler of merchandize, as aforesaid, shall, before he shall begin to vend or peddle merchandize as aforesaid, apply for and obtain a license, agreeably to the provisions of this act.

SEC. 3. *Be it further enacted*, That there shall be levi-

ed and collected on each license to venders of merchandize, the sum of fifteen dollars for every six months, and the further sum of twenty five cents on each hundred dollars of the value of all goods, wares and merchandize, except such as are of the growth, produce or manufacture of this state, received by such vender at his or her store, warehouse, stand or place of deposite for the last six months next preceding the granting of such license; and there shall be levied and collected on each license to peddlers of merchandize the sum of twenty dollars for every six months.

Amount of tax
to be paid by
venders.

Amount of tax
to be paid by
peddlers.

SEC. 4. *Be it further enacted*, That before any person, firm or co-partnership, shall receive a license to vend merchandize, he or they shall deliver, or cause to be delivered, to the collector of the proper county, a complete statement, in writing, of all the goods, wares and merchandizes, except such as are the growth, produce, or manufacture of this state, received at his, her or their store, stand, warehouse or other place of deposite, for the last six months next preceding the application for such license, to be sold on his, or her own account, or on account of any other person or persons whatsoever; which statement shall exhibit the aggregate amount of each such purchase, or deposite, made within the time aforesaid, the person or persons of whom purchased, or received, and the value of each purchase or deposite so made or received, at the prices at which they were purchased by him or them, or the person or persons on whose account they were deposited, and every such vender of merchandize shall sign such statement, and he or they, or some credible person for him or them, shall make oath or affirmation, before some judge or justice of the peace, that such statement contains a just and true account of all the goods, wares and merchandizes subject to tax as aforesaid, received by such vender of merchandize, to be sold either on his own account, or on account of any other person, for the last six months preceding the date of such oath, or since the last account rendered, and the value thereof according to the prices at which they were purchased respectively, and the names of the persons of whom purchased or received; which oath shall be in writing, annexed to such statement, subscribed by the person making it, and attested by the judge or justice: and upon receiving such statement on oath as aforesaid, and the amount of the tax to be paid thereon, it shall be the duty of such collector to give to such person or persons a receipt therefor, specifying on what account, and that such person is entitled to a license as a vender of merchandize for six

Amount of tax
how ascertained.

Collector to
give a receipt.

Clerk of county court to issue license.

Form of license.

Pedler's license how obtained.

Penalty for selling without license.

months next ensuing the date of such receipt; and such person shall thereupon deliver such receipt to the clerk of the county court of the proper county, and it shall be the duty of such clerk, on being paid one dollar for his fees, to make out and deliver to the person entitled thereto, a license under the seal of the court in the form following, to wit: State of Missouri, county of _____, sct. _____.

To all who shall see these presents, Greeting. Know ye, That _____ having on the _____ day of _____, in the year of our Lord eighteen hundred and _____, paid to _____ collector of the county aforesaid, the sum of _____ being the semi-annual tax imposed on him as a vender of merchandize: Therefore, the said _____ is hereby licensed and authorised to vend merchandize at any one place within the said county. In testimony whereof, I, _____ clerk of the county court of the county of _____, have hereunto affixed the (SEAL) seal of said court, this day of _____ in the year of our Lord eighteen hundred and _____.

A. B. Clerk. And before any pedler of merchandize shall receive a license as aforesaid, he shall pay to the collector of the proper county, the semi-annual tax imposed by this act on pedlers of merchandize, who shall give him a receipt therefor, in the same manner as in cases of venders of merchandize; and such pedler on delivering such receipt to the clerk of the county court, and paying him one dollar as his fee, such clerk shall grant him a license to peddle merchandize, in the form aforesaid, altering only so much as the case may require; but no license to a vender of merchandize, as aforesaid, shall authorise him to sell at more than one place at the same time in such county, nor to deal as a pedler, nor shall any pedler's license authorise him to deal as a vender of merchandize, as aforesaid.

SEC. 5. *Be it further enacted*, That if any person shall, after the first day of February next, deal as a vender of merchandize, or pedler, within the meaning of this act, without having a license therefor continuing in force, or if any person shall, by color of any license as a vender of merchandize, sell, or offer to sell, merchandize at more than one place at the same time, or to deal as a pedler, or shall, by color of any pedler's license, sell, or offer to sell or deal, as a vender of merchandize, as aforesaid, every person so offending shall, in addition to the duties imposed by this act, forfeit and pay the sum of five hundred dollars, the one half thereof to the use of the person prosecuting for the same, the other half to the use of the state, to be recovered with costs of suit by action of debt, bill, plaint or information, in any court having competent jurisdiction.

SEC. 6. *Be it further enacted*, That it shall be the duty of the clerks of the several county courts to charge the collectors of their several counties, with all receipts for taxes on licenses filed in their offices, pursuant to this act, in a book to be by him kept for that purpose; and at each and every term the county courts shall settle and adjust the account so kept by the clerk as aforesaid, and on ascertaining the amount received by the collector on account of licenses and taxes as aforesaid, shall cause their clerk, at each and every term, to certify to the auditor of public accounts the amount with which such collectors stand chargeable, who shall charge the collector with the amount so certified.

Clerks to charge collectors with receipts.

Amount to be settled by the county court.

Clerk to certify to auditor.

SEC. 7. *Be it further enacted*, That the several collectors shall from time to time, when they advertise a list or statement of monies received on other licenses, include in such list an account of all monies received by virtue of this act, and shall settle with the auditor of public accounts for, and pay into the treasury of the state, all monies which shall be received under the provisions of this act, in the same manner, and at the same times, that they are required to settle for and pay over the taxes assessed and collected for state purposes.

Duty of collector to advertise.

And settle with auditor.

SEC. 8. *Be it further enacted*, That an act entitled "an act imposing a tax on licenses to retailers of merchandize and pedlers," approved the twelfth day of December, eighteen hundred and twenty, shall be and the same is hereby repealed: *Provided*, That all fines, penalties and forfeitures incurred, or which may be incurred, under the provisions of the act hereby repealed, may be sued and prosecuted for to final judgment and execution, as if this act had not passed. This act shall take effect and be in force from and after the first day of February next.

Former act repealed.

Approved, 3d December, 1821.

CHAP. XII.

AN ACT directing the fencing and enclosing of Furnaces for the smelting of Lead.

WHEREAS, many serious and heavy losses have been sustained by sundry inhabitants from their cattle and other stock licking up the earth intermixed with small particles of mineral, in the immediate vicinity of furnaces and other works for the smelting of lead, and which in most instances causes their death. In order therefore, to prevent those losses in future,

Preamble.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That the owners or occupiers of such

Furnaces to
be enclosed.

In what man-
ner.

Penalty for
neglect.

Liable to par-
ty injured.

Proviso.

Further provi-
so.

and every furnace or other works used for the smelting of lead, in this state, which now are or hereafter shall be erected therein, shall be obliged, and they are hereby required to keep the same inclosed, with a good and lawful fence, for the distance of at least ten yards from any part of the said furnace or works, and in such manner as to prevent horses, cattle or other stock, from having access within the said enclosure, and also to keep and maintain the said fences and inclosures in good order and repair, for and during the term of six months after such furnaces or works have been last made use of for the smelting of lead.

SEC. 2. *Be it further enacted*, That if any such owner or occupier of any furnace or other works for the smelting of lead shall fail or neglect to make such inclosure, or to keep the same in repair for the term of six months after the said furnace or works have been last used as aforesaid, he, she or they so neglecting or failing shall forfeit and pay the sum of one dollar for each and every day, that the said inclosure around the said furnaces or works shall not have been so made and kept in repair, to be recovered by action of debt, with cost, before any justice of the peace by any person who will sue for the same, and shall also be liable to the party injured by such neglect or refusal, for the value of any horse, cattle or other stock of any kind that may be killed by licking at the said furnaces or works, or within the said distance of ten yards therefrom, to be recovered with costs in any court having competent jurisdiction to try the same; *Provided however*, That if such owner or occupier of any such furnaces or works, shall keep the same inclosed with what is deemed a lawful fence, such owner or occupier shall not be liable or accountable for any trespassing animal receiving injury as aforesaid: *Provided*, That if any person on his ceasing to occupy any furnace, shall leave the same inclosed according to the provisions of this act, he shall not be liable to pay the fine, or to pay the damages by this act imposed, unless it shall appear that the said owner or occupier removed or pulled down said fence, or caused the same to be done. This act shall take effect and be in force from and after the first day of May next.

Approved, 3d December, 1821.

CHAP. XIII.

AN ACT to amend an act entitled an act prescribing the duties of State Treasurer and Auditor of Public Accounts, and regulating their offices.

SECTION 1. *Be it enacted by the General Assembly of the*

State of Missouri, That so much of an act entitled "an act prescribing the duties of state treasurer and auditor of public accounts, and regulating their offices," as limits the number of securities to ten, be and the same is hereby repealed: *Provided nevertheless*, That in no case there shall be less than ten. This act to be in force from and after the passage thereof. Former act repealed.
Not less than ten securities.

Approved, 5th December, 1821.

CHAP. XIV.

AN ACT supplementary to the law prescribing the duties of county surveyor.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That any person owning or claiming any lands in this state, and the same be divided or split by any county line or lines, and the person owning or claiming such lands, and wishing to have the same surveyed, may apply to the county surveyor in which such person resides, and if there be no surveyor in such county, he may apply to any surveyor in an adjoining county, who is legally appointed as such, and on such application being made, the surveyor is authorised and required to make such survey, and shall be as valid as though such lands were situated entirely in one county, or such county lines had not divided the same, any thing in any law to the contrary notwithstanding. Lands split by county lines.
How and by whom surveyed.

SEC. 2. This act shall take effect and be in force from and after the passage thereof.

Approved, 5th December, 1821.

CHAP. XV.

AN ACT giving to Green Dewitt, Collector of Ralls County, time to pay over certain taxes.

WHEREAS, it has been represented to this General Assembly at the present session, that owing to some causes the appointment of assessor and collector of the county of Ralls was delayed until July last, and the assessment list not returned into the clerks office of said county until October last, so that the taxes assessed in said county for the year eighteen hundred and twenty-one cannot be collected and paid into the State Treasury within the time prescribed by law: Therefore, Preamble.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That Green Dewitt, collector of the said county of Ralls, shall have until the first Monday of April next. Further time allowed, until 1st Monday in April next.

April next, to collect and pay into the state treasury the amount of the taxes assessed in said county for the present year, and shall not incur, and be relieved from, the penalty prescribed by law for not paying over taxes into the treasury on the first Monday in December, eighteen hundred and twenty-one.

Approved, 5th December, 1821.

CHAP. XVI.

AN ACT amendatory to the several acts forming new counties in this state.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the commissioners appointed to locate the seats of justice in the several new counties of this state, are hereby authorized and required to sell the lots in the respective county seats on such credit as they, or a majority of them, shall think proper: *Provided,* That the longest credit shall not exceed two years from the date of such sale, any thing in the several acts to the contrary notwithstanding.

Lots in county seat how disposed of. Credit not to exceed two years.

SEC. 2. *Be it further enacted,* That this act shall be in force from and after the passage thereof.

Approved, 5th December, 1821.

CHAP. XVII.

AN ACT to annul the marriage of John Huskey, and Mary his wife, and John Farewell, and Abigail his wife.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the marriage contract entered into between John Huskey and Mary his wife, and John Farewell and Abigail his wife, be and the same are hereby annulled and made void, and the parties released and discharged from the said contracts, and from all duties and obligations arising therefrom, as fully, effectually and absolutely, as if they had never been joined in marriage: *Provided,* That nothing herein contained shall be so construed as to render illegitimate any child or children, born of the bodies of the said Mary and Abigail during their coverture. This act shall be in force from and after the passage thereof.

Marriage contract annulled.

Children not rendered illegitimate.

Approved, 6th December, 1821.

CHAP. XVIII.

AN ACT for the relief of the Collectors of Cooper and Saline counties.

WHEREAS, it appears to this General Assembly, that Preamble.
Andrew Briscoe, collector of the county of Cooper, and David Warren, collector of the county of Saline, have paid the greater part of the taxes due from their respective counties, and that they have not been enable to settle their accounts with the county courts, and that in consequence thereof a balance yet remains due this state; for remedy whereof,

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the further time of three months is allowed to Andrew Briscoe, collector of the county of Cooper, and David Warren, collector of the county of Saline, to collect and pay over to the treasurer of this state the balance assessed and due as taxes from them as collectors of their respective counties. Further time of 3 months allowed to pay over taxes.

SEC. 2. *Be it further enacted,* That the said Andrew Briscoe and David Warren are hereby acquitted of any forfeiture, for failing to collect and pay over the taxes assessed for their respective counties, on the first Monday in December, as now provided by law. This act to be in force from and after the passage thereof. Released from forfeiture.

Approved, 6th December, 1821.

CHAP. XIX.

AN ACT authorizing the Administrators of James Irwin, deceased, to sell real estate.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That Margaret Irwin administratrix, and Robinson Kelly, administrator of the estate of James Irwin, late of the county of St. Louis, deceased, be and they are hereby authorized to sell and convey all or any part of the real property of said estate, at public or private sale, and the avails thereof shall be assets in the hands of said administratrix and administrator, for the payment of the debts of said deceased. To sell all or any of the real estate at public or private sale.

SEC. 2. *Be it further enacted,* That said administratrix and administrator, shall before they proceed to the sale of any real property of said Irwin, deceased, enter into further bond and security before the county court or clerk in vacation, as heretofore required of administrators, for the faithful discharge of the duties assigned them by this act. This act shall be in force from and after the passage thereof. Adm'r. to give further bond and security

Approved, 6th December, 1821.

CHAP. XX.

AN ACT to prevent fraudulent conveyances, and for other purposes.

Preamble.

WHEREAS, from the unsettled state of land titles in this state, it has often happened that persons having incomplete titles to lands have sold the same, and made conveyances in writing therefor, and said persons so selling, already have, or hereafter may receive a patent issued by the United States for the same land, and by selling the same again to some person ignorant of the first sale, may commit great fraud to the injury of prior purchasers.

Persons selling land a second time, deemed guilty of fraud.

To be indicted & punished by fine & imprisonment.

Such sales invalid.

In what manner deeds to be acknowledged.

SECTION 1. *Be it therefore enacted by the General Assembly of the State of Missouri,* That if any person shall hereafter sell or convey a lot of ground, or tract of land, he had before that time sold and conveyed, or covenanted, and bound himself by any written instrument to sell or convey to any other person or persons ignorant of the first sale and conveyance, the person so making such second conveyance or covenanting, or binding himself by any instrument in writing so to do, shall be held and deemed to have committed a fraud against the first purchaser, and shall be liable to be indicted for the same, and to be punished by fine not exceeding double the value of the land so sold, and by imprisonment not exceeding twelve months, and that all such sales shall be invalid in law and equity: *Provided,* such first sale, conveyance or written instrument to sell or convey, shall have been duly recorded according to law: *Provided also,* That nothing herein contained shall be construed to effect any person entitled to military bounty lands, for military services rendered the United States.

SEC. 2. *Be it further enacted,* That hereafter when justices of the peace, judges, clerks of the courts, or other persons authorized so to do, shall take the acknowledgment of any deed or other instrument in writing, made and executed of and concerning any lands, tenements or hereditaments, wherein or whereby the same may be effected, either in law or equity; they shall moreover add a certificate stating that the person or persons making the acknowledgments are personally known to him or were proved by two credible witnesses, whose names shall be mentioned in the certificate to have been the proper persons who made and executed the deed or other instrument in writing.

How proven.

SEC. 3. *Be it further enacted,* That when any deed or other instrument in writing is made as aforesaid, and such deed or deeds are not acknowledged as aforesaid, before the same shall be admitted to record, shall be pro-

ven before some judge, justice or clerk, by one credible person, who shall state in the certificates to be annexed to said deed or other instrument in writing, that the person who executed said deed or deeds, is the real person who subscribed said deed or deeds, and that said witness is personally acquainted with the maker thereof.

SEC. 4. *Be it further enacted,* That no such deed of conveyance or other instrument of writing as aforesaid, shall be valid and binding (except between the parties thereto and their heirs) until the same shall have been deposited in the clerks office for record as the law directs; and the clerks of the several Circuit Courts shall keep an alphabetical list of all deeds of conveyances and other instruments of writing recorded in their offices, containing the names of the parties and the time when deposited for record; and when any person shall offer or deposit with the clerk, any deed of conveyance or other instrument of writing for record, the said clerk shall cause the names of the parties, and the time when such deed or other instrument was offered or deposited for record, to be entered on said list upon the same day when so offered or deposited, and shall keep the said lists in their respective offices open for the inspection of all persons who may wish to see the same, upon their paying to said clerk six and a fourth cents for the same.

Not valid till
filed for record

Clerks to keep
a list of deeds
in alphabetical
order. /

List open for
inspection.

Clerks fee.

SEC. 5. This act shall be in force from and after the first day of March next.

Approved, 6th December, 1821.

CHAP. XXI.

AN ACT for the relief of the Collectors of Jefferson, St. Genevieve, and Cole counties.

WHEREAS, it appears to this General Assembly, that Elisha Ellis, collector of the county of Jefferson, Francois Valle, collector of the county of Ste. Genevieve, and Samuel Johnson, collector of the county of Cole, have paid the greater part of the taxes due from their respective counties, and that they have not been able to settle their accounts with their respective county courts, and that in consequence thereof a balance yet remains due the state: Therefore,

Preamble.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the further time of three months be allowed to Elisha Ellis, collector of the county of Jefferson, Francois Valle, collector of the county of Ste. Genevieve, and Samuel Johnson, collector of the county of Cole, to collect and pay over to the treasurer of this

Further time
of 3 months
allowed to
pay taxes of
1821.

state, the balance that may appear due against them as collectors of their respective counties.

Acquitted of
forfeiture.

SEC. 2. *Be it further enacted*, That the said Elisha Ellis, Francois Valle, and Samuel Johnson are hereby acquitted of any forfeiture for failing to pay over the taxes assessed in their respective counties on the first Monday in December, as now provided by law: *Provided nevertheless*, That the said Elisha Ellis, Francois Valle and Samuel Johnson shall well and truly pay over and settle with the auditor within the time prescribed by this act.

This act shall be in force from and after the passage thereof.

Approved, 7th December, 1821.

CHAP. XXII.

AN ACT for the relief of John W. Wilson.

Preamble.

WHEREAS, it is represented to this General Assembly, that John W. Wilson, lately convicted of larceny, in the circuit court of Saint Louis county, and sentenced to corporal punishment and to the payment of a fine, has undergone the first part of the punishment, and that the Governor has remitted the latter part; but that the said John W. Wilson is still confined in prison, in consequence of his total inability to discharge the fees incurred by his imprisonment:

Discharged
from confinement.

SECTION 1. *Be it therefore enacted by the General Assembly of the State of Missouri*, That the sheriff of the county of Saint Louis, be, and he is hereby authorised and required, to discharge the said John W. Wilson from confinement.

County court
to settle and
pay sheriff's
account.

SEC. 2. *Be it further enacted*, That the county court of Saint Louis county, shall audit and settle the account of the sheriff of Saint Louis county, for the expenses incurred by him in consequence of the imprisonment of the said John W. Wilson, and make the proper order for its payment.

Approved, 11th December, 1821.

CHAP. XXIII.

AN ACT for the relief of Amos Wheeler, and others.

Preamble.

WHEREAS, it appears from the sickness and death of Abraham Beck, and the subsequent sickness of Amos Wheeler, of St. Louis, agent for sundry owners of lands in this state, for the payment of taxes, a failure in the list-

ing of such lands and payment of taxes thereon; has happened.

SECTION 1. *Therefore, be it enacted by the General Assembly of the State of Missouri.* That in cases where any Lands double taxed, upon redemption, owner to have credit by the state.
of such lands (a certified list of which shall be filed with the auditor of this state, within ten days from the passage of this act) shall have been taxed double on the assessment thereof, and sold to individuals, that upon the said Amos Wheeler, or the owner thereof, paying to the purchaser or to the proper officer for the use of such purchaser, the sum required for the redemption of the same, the said Amos Wheeler, or the owner of such land so redeemed, shall have a credit by the state of the amount of the double part of said tax, (leaving to the state the full amount of the single tax thereon) to be by him or them applied to the payment of any other taxes in the county where such land lies; and in cases where any of said lands have been taxed double on the assessment thereof, and not sold, or at the public sale of such land for taxes, shall have been bid in for the use of this state, that the double part of such tax, and the fifty per cent per annum accruing after sale of such lands for taxes, shall be and the same is hereby remitted: *Provided however,* That the said Amos Wheeler, or the owner of such land, shall, within six months after the passage of this act, pay to the proper officer, or into the treasury of this state, the full amount of the single tax on such land, with interest thereon, at the rate of six per cent. per annum, from the time such tax became due, with the legal costs arising thereon; upon which such double tax, sale or bidding in, as aforesaid, shall become void. Double tax & interest remitted.
Upon payment of single tax.

SEC. 2. *Be it further enacted,* That all persons owning, possessing, claiming, or having the care or management of any lands, lots, houses, and improvements within this state, lying and being in any county in which such person did not reside prior to the 1st day of June, 1821, who have failed to enter the same for taxation with the proper officer of the county wherein the same shall be situated, and whose lands or other property shall not have been sold for the taxes due thereon, or which may have been bid in for the use of this state, or sold to individuals, shall be allowed the further time of six months from and after the passage of this act, to list their lands and other property for taxation with the proper officer, and pay the tax on the same to the collector of the county in which such property is situated, in the same manner and be entered. Further time allowed to list property and pay taxes.

titled to the like advantages and credits, as provided for in the preceding section of this act.

Approved, 14th December, 1821.

CHAP. XXIV.

AN ACT directing the manner in which clerks of either the circuit or county courts may settle and pay certain monies in their hands, and for other purposes.

Clerks to deliver books, papers, &c. to their successors, and pay over monies.

If clk. of cir. & c'ty courts, to make out separate accounts

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That in all cases in which any clerk of a circuit or county court in this state, has heretofore resigned, or been removed, or shall hereafter resign, or be removed, from the office as such clerk, he shall, within ten days after his successor has been nominated and qualified, deliver to such his successor all dockets, files, papers, books and records, belonging to the said offices, respectively, which may be in his possession or power; and shall also make out, under oath taken before some judge or justice of the peace, a just and true account of all sum and sums of money which may then remain in his hands, or ought to have been paid to him as such clerk, and not before duly accounted for, and pay the balance due on such account within ten days thereafter, to such his successor in office, who shall apply the money so received in the same manner, and to the same purpose, as if it had been collected by him, and shall give receipts therefor, and account for the same with the proper accounting officers of the state or county at the next time they are by law required to settle and adjust their own respective accounts: and if the clerk who has so resigned, or removed, or shall hereafter resign or remove, shall have been clerk of the circuit court during the time that such court exercised the duties now transferred to the county courts, or shall since that period have been appointed to and performed the functions of clerk to both the circuit and county court, then he shall make out separate accounts of the moneys in his hands, which are payable either to the state or county, as the case may be, and pay the amount of monies which may be due on such accounts, those belonging to the state to the clerk of the circuit court, for the use of the state, and those belonging to the county to the clerk of the county court, for the use of the county.

Clerk dying representative to deliver over

SEC. 2. *Be it further enacted,* That if any clerk of any circuit or county court shall have died, or shall hereafter die, his legal representative or representatives shall, with-

out delay, deliver over to the clerk or clerks who may be appointed and qualified as the deceased successor or successors in office, all the dockets, files, books and papers which have or may come to their hands or possession belonging to such courts respectively, and make out accounts, under oath, to the best of their knowledge, of all monies which may be due and unaccounted for by the deceased, at the time of his death, and pay the amount so found due; either to the clerk of the circuit court, or clerk of the county court, as the case may be, and take the receipts therefor; which said clerk of the circuit and county courts shall account for the same in the manner pointed out by the first section of this act.

books, papers,
&c. and acct.
for monies.

SEC. 3. *Be it further enacted,* That the receipts taken by the said clerk who shall have resigned or been removed, or by the representatives of any clerk who shall have so died, shall be valid and effectual in law to exonerate and discharge him or them from all penalties and liabilities on account of the said monies so paid. This act shall take effect and be in force from and after the passage thereof.

Receipts taken to exonerate former clerk.

Approved, 14th December, 1821.

CHAP. XXV.

AN ACT to authorise David Bryant, administrator of Jacob Horine, deceased, to convey certain real estate.

WHEREAS, it appears by the petition of the heirs of Michael Horine, deceased, late of the county of Washington, that the said Michael Horine did, in his life time, contract with a certain Peter Bost for a tract of land situate in the state of Kentucky; and whereas it appears that prior to the performance of the contract on the part of the said Peter Bost, that the said Michael Horine and Jacob Horine, one of the heirs of the said Michael Horine, have both died, the said Jacob Horine leaving two children who are minors, and thereby have not the power of conveying real estate: Therefore,

Preamble.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That David Bryant, administrator of Jacob Horine, deceased, and one of the heirs of the said Michael Horine, be, and he is hereby authorised to execute, on the part of the heirs of the said Jacob Horine, a deed in fee simple, reciting therein this act, to the said Peter Bost, his heirs or assigns, on condition that he, the said David Bryant, will well and truly account to the heirs of the said Jacob Horine for their proportion of the

To convey real estate to Peter Bost.

To account
for the assets.

Conveyance
may be set a-
side for fraud.

assets arising from the execution of the said deed: *Provided*, That nothing herein contained shall be so construed as to prevent the heirs of the said Jacob Horine, at any time within five years after they shall have respectively become of age, from setting aside such conveyance for fraud or other improper conduct. This act shall be in force from and after the passage thereof.

Approved, 14th December, 1821.

GHAP. XXVI.

AN ACT erecting a part of the counties of Ste. Genevieve, Jefferson and Washington into a separate county by the name of Saint Francois.

Boundaries.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That all that part of the county of Ste. Genevieve, all that part of the county of Jefferson, and all that part of the county of Washington, bounded as follows, to wit: beginning at the south west corner of section one, range eight, township thirty four, in said county of Ste. Genevieve; thence northwestwardly to the north west corner of section thirty six, in range five, township thirty seven, thence on a direct line to the south east corner of section twenty three, in range six, township thirty eight; thence on a direct line to the south east corner of township thirty nine, range five; thence on a direct line to the south west corner of section fifteen, in range four, township thirty eight; thence on a direct line to the south west corner of section thirty four, in range four and township thirty six; thence with the township line between township thirty five and thirty six, to the south west corner of township thirty six, range four; thence due south nine miles; thence due east with the Madison line to the south west corner of section fifteen, in range eight, township thirty four; thence on a direct line to the beginning, is hereby laid off and erected into a separate county, which shall be called and known by the name of St. Francois county.

Comm's. ap-
pointed to fix
seat of justice.

SEC. 2. *Be it further enacted*, That Henry Poston, John Andrews, William Shaw, William Alexander and James Halbert, be and are hereby appointed commissioners, with full power and authority to fix upon the most suitable place in said county whereon to erect a court house and jail; and the place whereon they, or a majority of them, shall agree, shall be the permanent seat of justice for the said county of Saint Francois.

SEC. 3. *Be it further enacted*, That the powers and duties of the said commissioners within the county of Saint

Francois shall be the same as the powers and duties assigned to the commissioners appointed by "an act defining the limits of Howard county, and laying off new counties within the limits of said county as heretofore defined," approved November sixteenth, one thousand eight hundred and twenty, to point out and fix upon the most suitable place in the county of Ray whereon to erect a court house and jail for said county of Ray.

Their powers and duties.

SEC. 4. *Be it further enacted*, That the said commissioners, or a majority of them, be and are hereby empowered to receive as a donation, or to purchase, the lands by them selected, and lay off the same into lots or squares, and to expose them to public sale, under the same restrictions as are imposed by the before recited act on the commissioners of Ray county, and the powers and duties of the judge of the circuit court shall be the same in the said county of Saint Francois as in the said county of Ray.

Lands selected to be laid off in lots, and exposed to sale

SEC. 5. *Be it further enacted*, That the courts to be holden in the county of Saint Francois shall be holden at the house of Jesse Murphy, until said commissioners shall choose and fix on a temporary seat of justice in said county; and after the said commissioners have selected a temporary seat of justice in said county, the courts to be holden for said county shall be holden at the temporary seat of justice, until a house for holding courts, and a jail, be provided at the permanent seat of justice for the said county of St. Francois.

Courts, where to be held until temporary seat of justice be selected.

SEC. 6. *Be it further enacted*, That all executions to be issued after the taking effect of this act from the circuit or county courts of the counties of Ste. Genevieve, Washington and Jefferson, shall be directed to the proper officer of the county of Saint Francois, if the person against whom they may issue reside within said county of Saint Francois, and such execution shall be executed and returned by him in the same manner as if issued by the clerk of the county of Saint Francois; and all accounts of executors, administrators and guardians, now pending in the counties of Ste. Genevieve, Washington and Jefferson, if such executors, administrators and guardians reside in the said county of Saint Francois, shall, at the request of such executors, administrators or guardians, be certified by the clerk of either of the counties of Ste. Genevieve, Washington or Jefferson, with the proceedings had thereon, to the clerks of the said county of Saint Francois, and shall stand ready for trial or settlement as if they had commenced therein; and all justices of the peace and constables now residing within the limits of the said county of Saint Francois, shall continue to execute

Executions to be directed to the proper officer in the city of St. Francois

Accounts of ex'rs. ad'mrs. & g'dns. to be certified to St. Francois.

Justices of the peace & constables resid-

ing in St. Francois c'ty. to continue in office.

all the duties of their offices as justices and constables in the county of Saint Francois. This act shall take effect and be in force from and after the passage thereof.

Approved, 19th December, 1821.

CHAP. XXVII.

AN ACT for securing to Mechanics and others, payment for their labor and materials in erecting any houses or other buildings in the state of Missouri.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That artizans, builders, mechanics and those who furnish materials for buildings shall have a lien upon such materials furnished, and to work and labor done on houses and other edifices by them hereafter erected in whole or in part, each artizan, builder, mechanic and laborer for his own work, and each of those who furnish materials for so much as the said materials are worth or agreed to be paid for.

Mechanics & others who furnish materials to have a lien.

SEC. 2. *Be it further enacted,* That it shall be the duty of every person who wishes to avail himself of the benefit of this act, to file with the clerk of the circuit court of the county in which the building or buildings to be charged with the lien is or are situated, and within one month after such demand shall have accrued, a just and true account of the demand justly due him after all just credits given, which is to be a lien upon such building or buildings, and shall verify the said account by his own oath or by the oath of some other person, and shall also file at the same time a correct description of the property to be charged with the said lien, and it shall be the duty of the clerk to make an abstract thereof in a book to be by him kept for that purpose, containing the name of the person laying or imposing the lien, and of him against whom or upon whose contract it is imposed, the amount of the said lien and a description of the property to be charged, for which the said clerk shall be allowed to receive sixty-two and an half cents, and shall also receive the further sum of fifty cents as a tax to be accounted for as other tax upon process now is or hereafter may be.

Account to be filed with clk. of the circuit court.

Property to be described.

Duty of clerk.

His fee.

Suit may be commenced.

Property how subject to execution.

SEC. 3. *Be it further enacted,* That whenever any person shall wish to proceed against any property upon which he shall have a lien by virtue of this act, he may commence his suit in the ordinary form, and shall have judgment against the original debtor for the amount that shall be found due to him, and shall have the liberty of taking his execution against such a proportionable part of the

property charged with said lien, as his demand bears to the whole amount of the liens that are charged upon the said property under this act, which proportionable part shall be decided by the court, and also against other property of the defendant: *Provided however*, That no execution shall issue against the property charged with such lien, unless the defendant shall have owned or possessed the said property at the time of the commencement of the said suit, or unless a *scire facias* shall first have issued and been served upon the owner or possessor of such property, requiring him, her or them to appear and shew cause why judgment should not be entered up and execution had against such property.

SEC. 4. *Be it further enacted*, That in all cases under this act, it shall be lawful for the plaintiff to proceed by *scire facias* against the original debtor, and against all and every person or persons owning or possessing the property against which he wishes to proceed; but no judgment to be rendered on the said *scire facias* shall authorise the issuing of any execution, except against the property charged with the said lien, or such part thereof as the court shall direct.

SEC. 5. *Be it further enacted*, That the service of the *scire facias* shall be in the same manner as the service of a summons, except upon those defendants who cannot be found in the county where the proceedings are had, and are not residents of such county, and upon such defendants the service shall be by affixing a copy of the *scire facias* upon the door of the building upon which the lien is charged, for six weeks at least before the return of the said *scire facias*.

SEC. 6. *Be it further enacted*, That no lien shall bind any building for a longer time than twelve months after the said building is finished by virtue of this act, unless a suit shall have been brought on such lien in the manner provided by the foregoing sections of this act.

SEC. 7. *Be it further enacted*, That whenever any debt which is a lien upon any building under and by virtue of this act shall be paid and satisfied, it shall be the duty of the creditor to go before some officer in the county authorized to take the acknowledgment of deeds, and acknowledge satisfaction of the said lien, and such satisfaction being duly acknowledged and certified, shall be filed with the clerk of the circuit court, who shall thereupon enter satisfaction of such lien upon his record, in the same manner as he is directed by law to enter satisfaction of mortgages, and shall be allowed the same fees therefor as

Proceedings
scire facias.

Scire facias
how served:

Force of liens.

Debt, which is
a lien dischar-
ged creditor
to acknowl-
edge satisfac-
tion.

Penalty for neglect.

on mortgages to be paid by the creditor at the time; and if any creditor refuse or neglect to acknowledge such satisfaction after payment and reasonable request, he shall forfeit the amount of the lien which he claimed, to be recovered in an action of debt in any court of competent jurisdiction with costs of suit.

Creditor, filing an erroneous acct. to forfeit the amount of such lien.

SEC. 8. *Be it further enacted*, That if any person who shall avail himself of the benefit of this act, shall file with the clerk of the circuit court of the county in which the building or buildings to be charged with the lien is situated, an account for a larger or greater sum of money than is justly and truly due to him after just credits given, and which by the provisions of this act shall operate as a lien upon such buildings, he, she or they, who shall have so filed such account shall forfeit the amount of the lien, which he, she or they so claimed, to be recovered by action of debt in the name and to the use of the person against whom such account has been so filed, in any court of competent jurisdiction with costs of suit.

Land on which house is built subject also to lien.

SEC. 9. *Be it further enacted*, That the land upon which any buildings shall be erected, together with a convenient space round the same, not exceeding five hundred square feet clear of the building, shall be also subjected to the liens which are to be had under and by virtue of this act: *Provided*; That the said land shall have been at the time of erecting the said buildings the property of the person who shall have caused the same to have been so erected. This act shall take effect and be in force from and after the first day of April next.

Approved, 19th December, 1821.

CHAP. XXVIII.

AN ACT dividing the county of New Madrid, and erecting the same into two separate and distinct counties.

Boundaries of New Madrid and Scott.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That the now county of New Madrid shall be and the same is hereby divided and erected into two separate and distinct counties, by a line running as follows, to wit: beginning in the main channel of the river Mississippi, opposite a small creek or bayou called James's creek or bayou; thence in a direct line to the mouth of said creek; thence in a northwesterly course to a point in the swamp due north of the line between townships numbered twenty-five and twenty-six east of the fifth principal meridian, parallel with the northern boundary line of a tract of

land situate in the upper end of the big prairie, originally granted & confirmed to Moses Hurley, & whereon Mrs. Elizabeth Phillips now lives; thence running due west to the western boundary line of the said county of New Madrid; and that the tract of country lying to the southward of the said line shall be continued to be called and known by the name of New Madrid county, and that the tract of country lying northwardly and eastwardly of the said line shall be called and known by the name of the county of Scott.

SEC. 2. *Be it further enacted*, That Mark H. Stallcup, John Shanks, Thomas Bartlett, Francois Lesieur, and John Ruddle, be, and they are hereby appointed commissioners, with full power and authority to point out and fix upon the most suitable place in the county of New Madrid, whereon to build a court house and jail, and that the place whereon they, or a majority of them, shall so agree, shall be, and the same is hereby declared to be, the permanent seat of justice for the said county of New Madrid: *Provided however*, That the courts to be holden for the said county of New Madrid shall be held at the town of New Madrid, until a court house and jail shall be erected and built upon the place so agreed on by the said commissioners, after which time the courts shall be held at the said place so agreed on.

SEC. 3. *Be it further enacted*, That Enoch Evans, Abraham Hunter, Thomas Roberts, Joseph Smith, and Newman Beckwith, be, and they are hereby appointed commissioners, with full power and authority to point out and fix upon a suitable place in the said county of Scott, whereon to erect a court house and jail for said county, and that the place whereon the said commissioners, or a majority of them shall so agree on, shall be, and the same is hereby declared to be the permanent seat of justice of the said county of Scott: *Provided however*, That the courts to be holden for the said county of Scott shall be held at the house of Thomas Houts, until a court house and jail shall be erected for the said county upon the place so agreed on by the said commissioners, from which time the courts of the said county shall be held at the said place so agreed on by said commissioners.

SEC. 4. *Be it further enacted*, That the said commissioners, or a majority of them, in each of the respective counties, are hereby authorized and empowered to receive as a donation, or purchase, a title in fee simple, such lot or parcel of land not exceeding two hundred acres, nor less than fifty acres, as they, or a majority of them, in their several and respective counties, shall judge

ers appointed
for N. Madrid.

To fix seat of
Justice,

ers appointed
for Scott c'ty.

To fix seat of
Justice.

Powers and
duties of each
in selecting
scite, laying
off into lots &
disposing of
the same in
their respec-
tive counties.

most convenient scites for the aforesaid public buildings in their respective counties, and to take from the person or persons of whom they may purchase or receive donation or donations, good and sufficient warranty deed or deeds in fee simple for such lot or lots, parcel or parcels of lands; which said deed or deeds shall be made to said commissioners respectively, and their successors in office, in trust, and for the use and sole benefit of each of the said respective counties of New Madrid and Scott; and each of the said tracts of land shall, by the said respective commissioners, or a majority of them, be laid off into convenient lots or squares; sold, disposed of and conveyed to purchasers, in the manner and subject to the provisions as contained in the sixth section of the act entitled "an act erecting a part of the county of Ste. Genevieve into a separate county by the name of Perry," approved November sixteenth, eighteen hundred and twenty, and the proceeds of the sale of such lots, shall be laid out by the said commissioners respectively, and appropriated to the purposes, and in the same manner, pointed out in the said sixth section of the above-recited act; and they, or a majority of them, shall let out and plan the said public buildings in their respective counties in the same manner as pointed out by the same section of the said recited act.

To take an oath and give bond & security.

SEC. 5. *Be it further enacted*, That each of the commissioners, before entering into the duties of their respective offices, shall take an oath or affirmation, and give bond and security, with condition in the manner as pointed out in the seventh section of the said recited act, and render accounts to the courts of the said counties respectively of their respective proceedings, also in the same manner as is mentioned in the said seventh section of the said recited act.

Vacancies how supplied.

SEC. 6. *Be it further enacted*, That if any of the said commissioners shall refuse to act, their places shall be supplied in the same manner provided for by the eighth section of the said recited act, and they shall receive compensation for their services also in the manner pointed out in the same section of the said recited act.

Compensation.

Commissioners discharged on final settlement.

SEC. 7. *Be it further enacted*, That each of the said commissioners respectively shall have full and completely discharged their duties, agreeably to the provisions of this act, they shall respectively present to their county courts, all their accounts and documents, together with a true and perfect statement of their respective proceedings, at the next term of said court, in their several and respective counties, thereafter; and the said county courts shall proceed to settle the said accounts, and discharge the said

commissioners, cause satisfaction to be entered on the said respective bond or bonds, in the same manner as is required and pointed out by the ninth section of the said recited act; and the said commissioners, respectively, shall execute release or quit claim deeds for any lands that may remain in their, or either of their, possession, to the Governor, and his successors in office, in trust for the said counties respectively; and the said lands so remaining shall be sold and disposed of, and the monies arising by such sales disposed of in the same manner as is pointed out by the same ninth section of the said recited act.

Satisfaction to be entered on their bond.

Remaining lands to be released to governor in trust for the counties.

SEC. 3. *Be it further enacted*, That from and after the first day of March next the said county of Scott shall be vested with all the powers, privileges and immunities of a separate and distinct county; and all civil suits and criminal prosecutions depending and undetermined in the said county of New Madrid, on the said first day of March next, shall be determined and carried into effect in the same way they would have been, if this act had not been passed; and all executions to be issued after the taking effect of this act, upon judgments rendered in the circuit court for the county of New Madrid, against any person or persons residing in the county of Scott, for all fees, fines and forfeitures which shall be then due, in pursuance of suits, process, or proceedings commenced, or served at the time of the taking effect of this act, shall be directed to the proper officer of the county of Scott: and all executors, or administrators and guardians, who now live, or hereafter may remove, to the said county of Scott, and who may before the taking effect of this act, have administered on any estate in the said county of New Madrid, or may have taken on him or them the execution of any last will and testament, or the guardianship of any minor, or his estate, which guardianship, executorship, or administratorship shall have commenced within the county of New Madrid, such executor, administrator or guardian shall be at liberty to obtain a copy of the papers and proceedings in their respective cases, and file the same with the clerk of the county court of the county of Scott, and make final settlement in said county, and be subject to the like proceedings in the county of Scott as they would have been subject to in the county of New Madrid, if this act had been passed: *Provided*, That the estate so administered on did belong to that part of the county of New Madrid which is included in the county of Scott: *Provided also*, That the sheriff or collector of New Madrid county shall have full power to collect all taxes actually assessed and due by any person residing in the said

Scott co. after 1st March next to be separate & distinct co.

Process to whom directed, and where returnable.

Ex'ors. adm'rs, and guardians how & where to settle acct.

Proviso.

Further provision.

county of Scott; in the same manner as if this act had not been passed.

Justices of the peace in Scott City to continue their duties as such.

Justices of the peace superseded, to deliver dockets, &c. to his successor.

Who must receive receipt therefor.

Sec. 9. *Be it further enacted,* That any justice of the peace in the county of Scott, who acted as such when it was included in the county of New Madrid, shall have full power to proceed in all cases commenced, or judgments given, before the taking effect of this act, in as full a manner as if such suits had commenced, or judgments given, before him as justice of the county of Scott; and any person who now acts as a justice of the peace in that part of the county of New Madrid, which now falls into the county of Scott, and who may not be appointed a justice of the peace in the county of Scott, shall deliver to some justice of the peace in the township in which he resides, all dockets, documents and papers which may belong or relate to his office as justice of the peace, whole, safe and undamaged, and the justice to whom they are delivered shall receive the same, and give a receipt therefor, and it shall be his duty to proceed on such docket, documents, and papers, in the same manner as the justice delivering the same could have done had this act not been passed.

City of Scott attached to 4th jud. district. Judge to appoint a clerk.

Sec. 10. *Be it further enacted,* That the said county of Scott shall belong to the southern circuit, and fourth judicial district, and the judge thereof shall, on or before the first day of March next, appoint a clerk for the circuit court for the said county of Scott, who shall be qualified in every respect, perform the same duties, and be entitled to the same fees that other clerks of the circuit courts now are or hereafter may be by law. This act shall take effect and be in force from and after the first day of January next.

Approved, 28th December, 1821.

CHAP. XXIX.

AN ACT establishing and regulating inspections of Tobacco within this State.

Tobacco not to be shipped without inspection.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That no tobacco shall be shipped or exported from this state unless the same shall be packed in hogsheds or casks taken from some public warehouse established as hereinafter directed, and received and inspected according to the provisions of this act.

County courts to authorise the erection of warehouses.

SEC. 2. *Be it further enacted,* That it shall be the duty of the several county courts within this state from time to time, to authorise the erection of warehouses for the reception and inspection of tobacco at such places within their respective counties as they may deem necessary.

and proper, and they shall moreover require the person or persons who shall apply for permission to erect the same, to give bond with sufficient security in a reasonable penalty, payable to the justices of the said county court and their successors in office, for the benefit of the county, with condition to erect such strong, close and substantial house or houses, as will contain sufficient room for at least one hundred hogsheads of tobacco, and as many more as the court may think necessary, and also to keep the same in repair as long as it shall continue a public warehouse.

To take bond and security.

Condition of bond.

sec. 3. *Be it further enacted,* That all tobacco which shall be brought to any of the warehouses established as herein before directed shall be viewed, inspected and examined by one person to be thereunto appointed, who shall be called inspector and who shall be appointed in the manner following, to wit: the county courts of the several counties wherein any warehouse or warehouses shall be established according to the provisions of this act, shall, and they are hereby authorized and required once in every year at the first term of their courts, or at the next succeeding term, to appoint a person of fair fame and reputation, and reputed to be skillful in tobacco, as inspector, for each and every warehouse within their respective counties, and in case of death, resignation or removal of any person so appointed, the said courts shall at the terms next succeeding upon notice of such death, resignation or removal, appoint a person qualified as aforesaid to act as inspector for that inspection where the vacancy shall have occurred, until the next regular appointment of inspectors, and every inspector shall continue in office until a successor is appointed.

Tobacco to be viewed inspected by inspector.

Inspector, how and by whom appointed.

Vacancy in the office of inspector how supplied.

sec. 4. *Be it further enacted,* That every person who shall be appointed inspector by virtue of this act, shall before he enters upon the duties of his office, enter into bond with sufficient security in the penalty of not less than one thousand dollars at the discretion of the county court, payable to the justices of his county court and their successors in office, for the benefit of the county with condition for the true and faithful performance of his duty while he continues inspector, according to the directions of this act; which bond shall be recorded in the county court, and the county treasurer shall move for judgment upon the same against every inspector failing to discharge his duties as such, within two months after notice of such failure, under the penalty of five hundred dollars; and every inspector shall also take the following oath or affirmation in open court, at the time he executes his bond,

Inspector to give bond and security.

Bond to be recorded in city court.

City treasurer to move against inspector for neglect of duty.

Oath of in-
specter.

to wit: "You do solemnly swear (or affirm as the case may be) that you will diligently and carefully view and examine all tobacco brought to the warehouse whereof you are appointed inspector, and that you will not receive or pass any tobacco, which is not in your judgment sound, well conditioned, merchantable and free from trash, and that in classing the same, you will according to your best skill and judgment, make a true and correct discrimination between the first, second and third qualities, and that you will not receive, pass or stamp any hogshead or cask of tobacco contrary to the true intent and meaning of this act, nor refuse any tobacco that in your judgment is sound, well conditioned and merchantable and free from trash, and that you will not change, alter or give out any tobacco other than such hogsheads or casks for which the receipt to be taken in was given; but that you will in all things well and faithfully discharge your duty in the office of inspector according to the best of your skill and judgment, and according to the directions of this act, without fear, favor or affection, malice or partiality, so help you God." And if any person shall presume to execute his office of inspector, before he shall have given such bond and taken such oath as aforesaid, he shall forfeit and pay five hundred dollars for the use of the county.

Penalty for
exercising of-
fice without
having given
bond & taken
oath.

Inspectors,
when to attend
their ware-
houses.

SEC. 5. *Be it further enacted,* That all inspectors to be appointed by virtue of this act, shall attend at their respective warehouses from the first to the tenth of every month Sundays excepted (unless hindered by sickness) prepared to receive, inspect and deliver out tobacco from the fifteenth day of November, to the tenth day of June, yearly; and afterwards whenever requested Sundays excepted, to deliver out for exportation such tobacco as remained there on the said tenth day of June, but no inspector shall be obliged to view any tobacco, delivered between the said tenth day of June and fifteenth day of November: And every inspector neglecting to attend as aforesaid shall forfeit and pay to the party aggrieved, fifty dollars for every neglect, or shall be liable to an action on the case at the suit of the party aggrieved, to recover all such damages as he or they shall have sustained by occasion of any such neglect at the action of such aggrieved party.

Penalty for
neglect.

Marks, and
owners names
of tobacco to
be entered in
a book by in-
specter.

SEC. 6. *Be it further enacted,* That all persons having tobacco at a public warehouse may have equal justice, the inspector shall enter in a book to be kept for that purpose, the marks and owners names of all tobacco brought to their respective warehouses for inspection, in

the order in which the same shall be brought in; and such inspector shall view and inspect the same in due time as it shall be entered in such book, without favor or partiality, and shall uncase and break in at least two places every hog-head or cask of tobacco brought to be inspected as aforesaid; and if he shall find the same to be good, well conditioned, merchantable and free from trash, he shall then determine whether such tobacco is of the first, second or third quality, shall weigh the same in scales with weights of the lawful standard, and shall stamp or mark with a scoring iron the hog-head or cask, with the name of the owner and of the person by whom raised (if known) the name of the warehouse at which inspected, and also the tare of the hog-head or cask, the quantity of nett tobacco therein contained, and whether the same is of the first, second or third quality: He shall also issue a receipt for each hog-head of tobacco he shall pass, if required by the owner, which receipt shall be in the following form; to wit: "At _____ warehouse, county of _____ this _____ day of _____ received of _____ hog-heads of leaf or stemmed (as the case may be) tobacco of the first, second or third quality (as the case may be) number, mark, weights and as follows: | number | marks | gross | tare | nett | to be delivered to the said _____ or order, for exportation when demanded, witness my hand." And no inspector shall presume to issue under any pretence whatsoever, a receipt for any tobacco, other than such as shall be printed and according to the above form, under the penalty of one hundred dollars, recoverable by any person who will sue for the same, and the inspector at each of the warehouses, to be established by virtue of this act, shall employ so many able hands at his warehouse, as the county court may from time to time direct, for the purpose of taking care of all tobacco brought to such warehouse, and storing it away after it shall be inspected and stamped.

Sec. 7. *Be it further enacted,* That when any tobacco shall be refused by the inspector, the proprietor thereof shall be at liberty to separate the good from the bad for re-inspection, but if he refuse so to do, then it shall be the duty of the said inspector to weigh, prise and cooper up the same, and mark the gross weight on each cask, and take care of and deliver the same to the owner, for which the inspector shall receive one dollar for every hog-head so delivered, in addition to the inspection fees hereinafter mentioned. And for the prevention of frauds the inspector shall grant a manifest or certificate for each hog-head of tobacco so refused, coopered and delivered; spe-

Tobacco to be uncase and broken in at least 2 places.

If passed, inspector to determine its quality; to be weighed.

Name of owner to be stamped.

By whom raised.

Name of warehouse.

Weights.

Quality.

Inspector to issue a receipt to owner.

Form of receipt.

No receipt to issue except printed.

Inspector to employ hands under direction of county court.

Tobacco refused, owner may separate good from bad.

Duty of inspector in case of refusal.

Inspector's fee.

Inspector to grant manifest or certificate.

for refused tobacco.

Penalty for selling or manufacturing refused tobacco, without manifest.

Owner of refused tobacco may carry it to any other warehouse for review.

Duty of inspector.

Compensation of inspector.

Owners of tobacco to furnish nails for coopering or pay 25 cents for each hogshead.

Inspector to pay proprietor of warehouse 75 cents for each hogshead.

Inspectors pay not to exceed \$200

Surplus to be paid into co. treasury.

Inspectors annually to report to the co. court.

ing the weight of the same, and that the same had been inspected and refused; and if any person shall sell refused tobacco, or manufacture the same, without such manifest, he shall forfeit and pay the sum of fifty dollars for every hogshead so sold, or manufactured, one half to the person suing for the same, and the residue for the benefit of the county in which the offence shall be committed; but it shall be lawful for any person having a hogshead of tobacco refused; to carry the same, with the manifest, to any other warehouse, and the inspector thereat, upon viewing the tobacco, if he esteem it of good quality, first destroying the manifest, he may grant a receipt as is hereinbefore directed, or shall grant another manifest, for which one dollar shall be paid, expressing the review, and that it was the second time refused; after which second refusal the owner shall not be permitted to carry the tobacco to any other warehouse for re-inspection, but may either have the same picked or sell it as refused tobacco, accompanying it with the manifest.

SEC. 8. *Be it further enacted*, That for every hogshead of tobacco inspected at any of the warehouses established by virtue of this act, the planter or owner of the same shall pay to the inspector one dollar, whether the same be passed or refused; and for every hogshead shipped from any of the warehouses aforesaid, the shipper or exporter, when he demands the same for exportation, shall pay to the inspector the further sum of one dollar; and the owners of tobacco shall furnish nails for coopering and heading up their hogsheads, or in case of failure so to do, the inspector shall furnish the same, and shall receive from the owner twenty-five cents for each hogshead coopered up: and the said inspector, out of the money arising from inspection and shipment of tobacco, shall, in the first instance, pay to the owner or proprietor of the warehouse seventy five cents for every hogshead received thereat, as rent for said warehouse, and shall retain the residue for his own compensation: *Provided*, Such compensation shall in no case exceed two hundred dollars. And whenever the nett profits of the warehouse shall exceed the sum necessary for paying the sums aforesaid, the surplus shall be paid into the county treasury by the said inspector, for the benefit of the county: and every inspector shall, once a year, at the term of the county court of his county, return to the said county a statement of the number of hogsheads of tobacco received at his warehouse during the year, the number passed, and the number refused, and the number delivered for exportation, and shall also, account to the said court for all monies received by virtue of his

office, and all disbursements made, and shall then and there take the following oath: "I, A. B. do swear or affirm (as the case may be) that the account now produced contains an exact statement of all the tobacco received at and shipped from the warehouse at which I am inspector, all fees received for the inspection and shipment of the same, and all the disbursements necessarily made in the discharge of my office."

Sec. 9. *Be it further enacted*, That every inspector shall store away and secure at night, every hogshead of tobacco which he shall have inspected during the day, and shall, in case of negligence, be liable to the action of the proprietor of such tobacco for all damages accruing there-
Inspectors to secure at night tobacco inspected during day.

Sec. 10. *Be it further enacted*, That when any new inspector shall be appointed at any warehouse, such inspector shall, and he is hereby required, to give to the person whom he shall succeed in office, a receipt under his hand containing the numbers, marks, gross, tare and nett weight of all and every hogshead or cask of tobacco, which shall be then remaining at the warehouse at which he is appointed inspector, with the delivery of which hogsheads or casks of tobacco so remaining, he shall from thenceforth be chargeable and liable; but he shall in no wise be accountable for the loss of weight or quality of tobacco contained in any hogshead or cask, for which receipt was by him so as aforesaid given: and if any hogshead or cask of tobacco be hereafter received by any person whatsoever, and delivered out of any warehouse for exportation by the inspector attending the same, such inspector from the time of such delivery shall be forever discharged and acquitted from all actions, costs and charges for, or by reason of, the tobacco contained in any such hogshead or cask being unsound and unmerchantable, or of less quantity, of different quality, from that specified in the receipt given for the same, any thing herein contained to the contrary notwithstanding.

New inspectors to give predecessors receipt for tobacco in the warehouse.

And thereupon to be accountable for such tobacco.

To what extent.

Inspectors not responsible for quality or quantity of any tobacco delivered for exportation.

Sec. 11. *Be it further enacted*, That the inspectors of tobacco at the several warehouses within this state, shall immediately on the delivery of every hogshead of tobacco at the warehouse whereof they are respectively inspectors, give a receipt for such tobacco, if required by the proprietor or person bringing the same to the said warehouses, expressing therein that the same is for uninspected tobacco; every inspector refusing so to do shall forfeit and pay to the owner of the said tobacco five dollars:

Receipt for uninspected tobacco.

Provided, Such delivery is made during the time inspectors are compelled to attend their warehouses.

Provide.

Sec. 12. *Be it further enacted,* That if any inspector's receipt be casually lost, mislaid or destroyed, the person or persons entitled to receive the tobacco, by virtue of any such receipt, shall make oath before any justice of the peace of the county where the same is payable, to the number and date of every such receipt, to whom and where payable, and for what quantity of tobacco the same was given, and that such receipt is lost, mislaid or destroyed, and that he, she or they, at the time such receipt was lost, mislaid or destroyed, was lawfully entitled to receive the tobacco therein mentioned, and shall take a certificate thereof from such justice, and shall advertise the loss of such receipt at the court house of the county in which such inspection may be, on the court day, and at the inspection where the tobacco was brought, for four weeks successively, and shall moreover give bond with sufficient security to indemnify the inspector from loss by the claim of the person who may thereafter produce the original receipt within twelve months after the notice given of the loss thereof; whereupon the inspector shall grant a duplicate of the same receipt to the person or persons entitled to receive the tobacco by virtue of such original receipt, and not otherwise, which receipt shall be signed as "duplicate." The bond so taken shall be assignable by the inspector taking the same, to the person producing the original receipt, who may maintain an action of debt thereupon, and such assignment shall exonerate the inspector from any claim or demand against them, by virtue of the original receipt: *Provided nevertheless,* That if principal and security should, at the time of taking such bond, be insufficient, then in that case the inspector shall be responsible for the value of the tobacco to the person producing such original receipt, and if any person shall be convicted of making a false oath, or producing a forged certificate in the case aforesaid, such person shall suffer as in case of wilful and corrupt perjury.

Sec. 13. *Be it further enacted,* That every inspector shall carefully enter, in a book to be kept for that purpose, the marks, numbers, gross, tare and nett weight of all tobacco viewed and stamped by them as hereinbefore directed, and in what vessel or boat the same shall have been put on board, and shall also, with every vessel or boat load of tobacco, send a list of the marks, numbers, gross, tare and nett weight of every hogshead or cask of tobacco then delivered, to be given to the master of the boat or vessel in which the same shall be embarked.

Sec. 14. *Be it further enacted,* That all stemmed tobacco not laid straight, whether the same be packed loose

Inspectors receipt lost, duty of owner.

Loss of receipt to be advertised.

To give bond to indemnify inspector.

Duplicate receipts.

Bond assignable by inspector.

Proviso.

Inspectors book.

List to be furnished by inspector when exposed.

Stemmed tobacco unlawful.

or in bundles, shall be accounted unlawful tobacco; and full, if not laid
 no tobacco packed in hogsheads, which exceed fifty inches in the length of the stave, or thirty two inches at the Legal dimen-
 head within the crou, making reasonable allowance for sions of hogs-
 prising (which allowance shall not exceed two inches a- head.
 bove the guage in the prising head, and which shall be
 bound with eight hoops) shall be passed or received, but Owner of to-
 the owner of such tobacco packed in hogsheads, or casks bacco, packed
 of greater dimensions than above expressed, shall be oblig- in larger casks
 ed to repack the same in sizeable casks, before the same to repack it.
 shall be passed or stamped by the inspector, nor shall any
 hogshead be so passed or stamped unless the nett weight Nett weight.
 thereof shall be at least one thousand pounds.

SEC. 15. *Be it further enacted,* That any person who Penalty for
 shall ship any refused tobacco, unless it shall have been shipping refus-
 reinspected and passed, as is provided for in this act, shall sed tobacco.
 forfeit and pay twenty-five cents for every pound of tobac-
 co so shipped, which shall be recovered in a court of law
 having original jurisdiction in this state; and it shall be
 lawful for any person to sue for the same, and the infor-
 mer or person suing shall have half of any money so for-
 feited and recovered, and the residue shall be paid into
 the county treasury for the benefit of the county in which
 the offence shall be committed: *Provided,* That nothing
 herein contained shall be construed to prohibit the own- Proviso,
 er of such refused tobacco, or his or her agent, from pick-
 ing and reprising the same at his discretion.

SEC. 16. *Be it further enacted,* That any person shipping Penalty for
 or carrying any uninspected tobacco to any port or place shipping unin-
 without the limits of this state, shall, after the first day spected tobac-
 of July next, forfeit and pay the sum of six and one fourth co.
 cents for every pound of tobacco so shipped, to be recov-
 ered and applied as is directed in the preceding section,
 in the case of penalties for shipping refused tobacco.

SEC. 17. *Be it further enacted,* That any inspector who Penalty for
 shall alter, change, or deliver out, any hogshead of tobac- altering or
 co, other than the one for which the receipt to be taken changing any
 in was given, shall forfeit and pay the sum of one hundred hogshead of
 dollars, for every hogshead so altered, changed or deliv- tobacco.
 ered out. And if any inspector shall fail or refuse to de-
 liver any hogshead of tobacco, when the same shall be For failing to
 demanded for exportation, or who shall deliver such to- deliver when
 bacco without an order from the owner thereof, he shall, demanded.
 in either case, forfeit to the owner double the value of
 the tobacco which he shall so refuse to deliver, or deliver
 wrongfully.

SEC. 18. *Be it further enacted,* That any inspector who
 shall take, accept or receive, directly or indirectly, any

For receiving gratuity, fee or reward for any thing by him so done in any gratuity other than legal salaries or allowances. pursuance of this act, other than the payments and allowances herein before mentioned and expressed, upon being convicted thereof, shall forfeit and pay the sum of one hundred dollars, to be recovered with cost to the use of the county wherein the offence shall be committed, and shall moreover be removed from office. And if any person shall offer any bribe to any inspector for any thing by him to be done in pursuance of this act, other than the payments and allowances herein before mentioned and expressed, such person so offending, upon being thereof convicted, shall forfeit and pay one hundred dollars for the use of the county wherein the offence shall be committed.

Penalty on person offering bribe.

Altering tobacco deemed forgery.

SEC. 19. *Be it further enacted,* That any person who shall alter or change the face of a note for passed or refused tobacco, or who shall alter or erase the stamps or marks on any hogshead of inspected tobacco, whether passed or refused, shall be deemed guilty of forgery, and punished as in other cases of forgery.

Further duty of owners of warehouses.

SEC. 20. *Be it further enacted,* That every person who shall erect a warehouse in pursuance of this act, shall, in addition to the requisitions herein before mentioned, be required to erect a strong and sufficient **prize** within the same, to have a close comfortable room with a fire place and lock for the use of the inspector, and also to provide a pair of strong scales and correct iron weights, to weigh at least fifteen hundred pounds: *Provided,* That for the first two years after the establishing of any warehouse, it shall be lawful to weigh tobacco with any just weights, other than iron as aforesaid.

Proviso.

County court to appoint a commissioner of warehouses.

SEC. 21. *Be it further enacted,* That the county courts of counties wherein one or more warehouses shall be erected, shall at the term whereat the appointment of inspectors is made, appoint a discreet householder of ability and integrity to act as commissioner of warehouses for one year, whose duty it shall be to see that the warehouses in his county are kept in good repair, that proper scales and weights be provided, kept in repair and examined and compared with the standard weights of the county once in six months at least, to visit semi-annually, every warehouse in his county, and see that the tobacco therein is properly stored away and secured, and that the inspectors diligently discharge their duty; and if he shall discover in any inspector any negligence or breach of his duty, he shall report the same to the county court at its next term, whereupon said inspector shall be proceeded against according to law: And the commissioner

His duty.

so appointed shall be allowed two dollars for every day he shall be necessarily employed in performing the duties prescribed by this act, to be paid out of the county treasury: *Provided*, That such compensation shall not exceed thirty dollars in any one year. To be paid by county.

SEC. 22. *Be it further enacted*, That the inspectors of tobacco under this act, shall be, and they are hereby exempted from militia duty, except in case of actual invasion and insurrection, and also from serving on juries. Inspectors exempt from militia duty.

SEC. 23. *Be it further enacted*, That all penalties and forfeitures in this act contained, the mode of recovery and application of which, are not specially set forth, shall be recovered by action of debt at the suit of the county treasurer, and shall be applied to lessening the county tax. Penalties, how recovered.

SEC. 24. *Be it further enacted*, That if before the erection of a public warehouse in any county, the quantity of tobacco raised or brought therein, shall in the opinion of the county court require the appointment of one or more inspectors, the same shall be appointed, and when appointed, may proceed to examine and inspect any tobacco which may be lodged in any private warehouse and shall pass or refuse the same, and do all other acts that are required by this act in case of inspection in public warehouses; and such inspection shall be to all intents and purposes legal: the owners of such private warehouse shall not suffer any tobacco to be removed therefrom after inspection unless by order of the inspector, who shall have as complete control over the same as if it were stored in a public warehouse, and shall be responsible in the same manner to the owner thereof: any proprietor or owner of a private warehouse in which tobacco has been inspected and stored, who shall deliver, or suffer the same to be removed without an order from the inspector as aforesaid, shall forfeit double the value of the tobacco so delivered or suffered to be removed, to be recovered by the inspector for the benefit of the owner of such tobacco; *Provided*, That there shall be no tobacco inspected in a private warehouse where there is a public one erected in the same county and prepared for the reception and inspection of tobacco. This act shall be in force from and after the passage thereof. Public warehouses not built Tobacco may be inspected at private warehouses.
Inspectors control over private warehouses.
Penalty on owner for suffering tobacco to be removed without order.
Tobacco not to be inspected at private where there is a public warehouse.

Approved, 28th December, 1821.

CHAP. XXX.

AN ACT for the relief of Jesse Owens.

SECTION 1. *Be it enacted by the General Assembly of*

Jesse Owens *the State of Missouri*, That Jesse Owens or his present
 or his present wife of the county of Ray; be, and he, she or they are
 wife may sell hereby authorised to retail spirituous liquors without
 spirituous li- hereby authorised to retail spirituous liquors without
 quors without obtaining or paying for licence, as long as they shall keep
 license. an orderly house, any thing in any law to the contrary
 notwithstanding. This act to be in force from and after
 the passage thereof.

Approved, 28th December, 1821.

XXXI.

AN ACT pointing out the manner that executions may be stayed, and
 regulating the sale of property under execution.

SEC. 1. *Be it enacted by the General Assembly of the*
State of Missouri, That it shall be the duty of the county
 court of every county in the state at their first term after
 the passage of this act or as soon thereafter as may be,
 and at every succeeding annual term thereafter and as
 often as vacancies may occur, to appoint in each and eve-
 ry township in their respective counties, three respecta-
 ble householders therein, to judge of the value of all prop-
 erty real or personal taken under execution on a judg-
 ment rendered in any court of record, or before a justice
 of the peace, who before entering on the duties of their
 office shall severally take an oath before some judge or
 justice of the peace for the faithful and impartial dis-
 charge of the duties of their respective offices, and any
 valuer called upon by the proper officer, to make such
 valuation, who shall fail to attend on the day fixed upon
 unless prevented by sickness or other good cause, shall
 forfeit and pay to the use of the plaintiff in the execution
 the sum of five dollars, to be recovered by motion before
 a justice of the peace, ten days previous notice having
 been given: The said valuers shall continue in office for
 one year and until their successors are appointed, and
 shall each of them receive from the defendant in the ex-
 ecution the sum of one dollar for every days attendance
 he shall be necessarily employed in making such valua-
 tion, and if the whole of the said valuers shall not agree
 in the valuation of property, the concurrence of any two
 of them shall be deemed sufficient.

SEC. 2. *Be it further enacted*, That when any execu-
 tion shall issue from any court of law or equity, or from a
 justice of the peace, in favor of any person or corpora-
 tion on any judgment order or decree heretofore obtain-
 ed or hereafter to be obtained, it shall and may be lawfu-
 for the creditor his agent or attorney to endorse on the
 property at 2
 thirds of its ap-
 praised value.

County courts
 to appoint val-
 uers.

Valuers to
 take an oath.

Penalty for
 neglect of du-
 ty.

Tenure of of-
 fice.

Their fees.

Plaintiff may
 endorse on
 execution that
 he will take
 property at 2
 thirds of its ap-
 praised value.

said execution or order of sale that he the plaintiff will take property at two thirds of its appraised value in discharge of the whole, or in part of the execution or order of sale, and in case the endorsement is made in such a manner as to shew the plaintiffs consent to take property at two thirds of its value in discharge of the whole, of such execution or order of sale, then the said sheriff or other officer shall levy on all or any of the real or personal estate of the defendant, or so much thereof as will in his opinion be sufficient to pay the amount of such execution or order of sale, at two thirds of the probable value thereof to be appraised; whereupon it shall be the further duty of such sheriff or other officer charged with the said execution or order of sale to notify the said valuers of the township in which such real or personal estate is situate or found, to meet together at a certain day and place to be by him appointed to make an estimate and valuation of the real or personal estate so levied on, at their respective real worth in lawful money of the United States; and the said valuers after having made such their estimate and valuation, shall endorse the same in writing, signed by them or any two of them, and deliver it to the said sheriff or other officer, who shall as soon thereafter as may be, deliver a copy thereof attested by him to the clerk of the court or justice of the peace from whence such execution or order of sale may have been so issued, and if within twenty days after the depositing of such copy with the said clerk or justice of the peace, he the defendant shall fail to pay the amount of such execution or order of sale with interest and cost, then the said sheriff or other officer charged with the execution or order of sale, shall put up the said estate so levied on, at the said appraised value, and if the same will at such sale bring more than the said appraised value, and more than sufficient to pay the plaintiff, the amount of such execution or order of sale with interest and cost, he the said officer charged with the execution or order of sale, shall in such case pay the excess to the defendant; but if such estate, will not at such sale bring more than the said two thirds of the said appraised value, then the said sheriff or other officer charged with the execution or order of sale, shall deliver to the plaintiff or his agent the said real or personal estate so levied on, at two thirds of its appraised value, or so much thereof as will satisfy the said execution or order of sale with interest and cost; and the said sheriff or other officer is hereby authorized and empowered to make such deed, bill of sale or other transfer for the said property so sold or delivered to the

Sheriff, to levy.

To notify the valuers.

Valuation to be certified to sheriff, and he to deliver copy to clerk or justice.

Execution not paid within 20 days thereafter, property to be sold.

Property failing to bring 2 thirds of its appraised value to be delivered to plaintiff.

Officer to
make deed or
bill of sale.

plaintiff or purchaser thereof in the same manner as is now provided by law for conveying and transferring to purchasers on sales by execution.

Plaintiff fail-
ing to make
endorsement
proceedings
to be stayed.

SEC. 3. *Be it further enacted*, That in all cases where any execution or order of sale is issued, and the plaintiff, his agent or attorney does not endorse thereon that he will receive property at two thirds of its appraised value in discharge of such execution or order of sale as prescribed in the second section of this act, then and in every such case there shall be a stay of any further proceedings on the said execution or order of sale for the period of two and a half years thereafter: *Provided*, The debtor

Debtor to give
bond and se-
curity.

shall give bond with approved security to the satisfaction of the said sheriff or other officer charged with the execution, who may examine the securities under oath, as to his or their ability to pay the amount of such execution or order of sale, with interest and cost, which bond shall be conditioned for the payment of the judgment with interest thereon, and shall be in the form following:—

Form of bond.

Whereas, A. B. hath heretofore obtained a judgment against C. D. for the sum of _____ dollars with interest and costs before (here name the court or justice of the peace before whom judgment was rendered) and execution hath issued thereon, now, that further proceedings may be stayed thereon, we the said C. D. as principal, and E. F. as surety, do hereby agree and bind ourselves to pay the said A. B. on or before the _____ day of _____ the sum of _____ dollars, together with interest thereon at the rate of six per centum per annum until paid. In testimony whereof, we hereto set our hands and seals, this _____ day of _____

Estate or per-
son of defen-
dant to be re-
leased.

C. D. (SEAL.) E. F. (SEAL.) Witness G. H. (sheriff or constable as the case may be.) Upon the execution of which bond with security as aforesaid, the sheriff or other officer shall release the estate or person of the defendant so levied on or taken, and make return to the proper court or justice of the peace of his having made the said levy or taken the defendant (as the case may be) and of the defendants having stayed further proceedings thereon, and given bond as required by law, which bond shall, at the same time be by such sheriff or other officer brought into court and deposited with the clerk or justice of the peace from whence the said execution or order of sale had issued, and no other execution or order of sale shall issue on the same judgment, decree or order of sale, until the expiration of the term for which the former execution was stayed, *Provided*, That whenever any person may have actually delivered lead ore, or obtained

Bond to be de-
posited with
clerk or jus-
tice.

Debts for lead
ore not to be
stayed.

a receipt for lead ore delivered, the value of the same may be sued for and recovered as though this act had not been passed: *And provided also*, That whenever the defendant may be entitled to a stay of execution by giving personal security, as required by the provisions of this act, it may be lawful for such defendant to give as security any real estate at two thirds of its appraised value, ascertained as in other cases provided: if the title be approved by the court or justice, or by the judge or clerk in vacation, and if the real estate thus mortgaged, at two thirds of its appraised value, should not amount to the sum for which judgment was rendered, it shall and may be lawful for such defendant to give personal security for the balance which may not be secured by mortgage, and the same stay shall be had as if secured by personal security for the whole amount of the judgment: *Provided*, That the return of the officer charged with the execution shewing that such real estate is pledged for the payment of the judgment, shall in all cases be considered a mortgage within the provisions of this act.

Defendant may give real estate as security.

Such pledge deemed a mortgage.

Sec. 4. *Be it further enacted*, That if, after a stay of execution granted, according to the provisions of this act, in any case it shall be made to appear by the oath of one or more competent witnesses, that any such surety has, or is about to become insolvent, or to remove out of this state or county, without satisfying the legal demands against him, or that the original debtor designs to defraud his creditors or sureties, or remove from this state or county as aforesaid, it shall be lawful for the circuit or chancery court, in term time, or the clerks thereof in vacation, or the justice of the peace before whom the judgment was had, sufficient notice of the same, and the facts relied on, having been given to the party, or his attorney, on motion, if the facts are established, sworn to and subscribed by the witness, and if the court, clerk or justice of the peace before whom the enquiry is had, shall be of opinion that the disposing of the property of either principal or security, or that the going out of the state, or county, does endanger the debt, and that the debt will be lost unless execution issue, or new security be given, it shall be the duty of the court, clerk or justice of the peace to order and issue a writ of execution against both principal and surety: *Provided however*, That if the debtor, or his surety, will give additional surety to the plaintiff, to be approved by the judge, clerk or justice, then the motion shall be dismissed; and if the plaintiff shall fail to establish the facts set forth, he shall pay the costs of the application: and where additional security shall be given.

Security becoming insufficient, or removing out of the state, execution to issue.

Additional security may be given.

Penalty for
false swear-
ing.

en, the surety shall incur the same obligation with the original, and be liable to the same proceedings: *Provided*, That any person convicted of false swearing, where an oath is required by this act, shall suffer the pains and penalties prescribed by law for wilful and corrupt perjury, and moreover be liable to an action for private damages at the suit of the party aggrieved.

Def't. failing
to pay debt &
costs after stay
has expired,
execution to
issue & no se-
curity to be
taken.

SEC. 5. *Be it further enacted*, That if the defendant shall neglect or refuse to pay the sum due on the said execution, together with all interest and cost due thereon, at the expiration of the term for which such former execution was stayed, according to the conditions of the said bond so executed on the stay of proceeding on such former execution, or order of sale, then it shall and may be lawful for the plaintiff to have execution thereon, on which execution the clerk or justice shall endorse that no security is to be taken or stay granted; and the said execution shall meet with no further delay, but the estate, real and personal, of the defendant, and his securities in the bond, or so much thereof as will be sufficient, shall be levied on and sold to pay such execution, with interest and cost, in lawful money of the United States.

Provisions of
act, to what
extent.

SEC. 6. *Be it further enacted*, That the provisions of this act shall extend and include all cases of the sale of property, real, personal and mixed, on *capias*, attachment or other process against the person of any defendant, by virtue of any decree, order or judgment of any court of law or equity within this state; and also to all decrees, orders and judgments of the court of chancery for the foreclosures of the equity of redemption, to any lands, tenements or hereditaments whatever are or may have been mortgaged; and also to all deeds for the sale or conveyance of any property whatever: *Provided*, That nothing herein contained shall be construed to effect the sale of any real estate by order of court directed to any executor or administrator for the sale of any lands or tenements to pay the debts of any deceased person, but such order of sale shall be executed agreeably to the existing laws for regulating the duties of executors and administrators.

Sales by ex'ors
or adm'rs. not
effected.

SEC. 7. *Be it further enacted*, That if any of the appraisers shall be interested in the valuation of any property under execution, or shall neglect or refuse to attend, or in case the county court have not appointed appraisers in the township, it shall be the duty of the officer serving the execution to notify and summon an equal number of respectable and disinterested householders to attend and value said property, and the officer is empow-

Valuers inter-
ested, failing
to attend, or
not having
been appoint-
ed officer may
appoint.

ered to administer the necessary oath, and the appraisers thus appointed shall appraise the property agreeable to the provisions of this act, and such appraisement shall have the same force and effect as if the same had been made by the appraisers appointed by the county court. And if any sheriff, coroner, or constable shall expose any property for sale, or shall sell any property contrary, to the provisions of this act, the said sheriff, coroner or constable shall forfeit and pay the sum of twenty dollars to any person who shall sue for the same before any justice of the peace, on action of debt founded on this statute, and all such sales of property shall be void, and have no force or effect in law or equity.

Penalty on officer selling property contrary to this act.

Such sales void

SEC. 8. *Be it further enacted*, That when property shall be taken under an execution or order of sale, on which no endorsement shall have been made by the creditor, as provided for by this act, and the debtor does not give such security as pointed out by this act on a stay of execution, the property or estate so levied on shall be valued as herein pointed out, but shall not be sold under such execution for less than two thirds of such appraised value, in case the debtor will then give bond with security, to be approved of by the officer, in the form as provided for in the third section of this act, and conditioned for the payment of two thirds of the amount of the appraised value of the property so levied on, with interest, within two years and a half from that time; upon the execution of which bond the estate so levied on shall remain with, or in case of personal property, be redelivered into the possession of the defendant: *Provided*, That where a stay of execution is obtained under the provisions of this act, it shall not extend to delay the collection of fees of officers or witnesses, due for services rendered or taxed in the bill of costs, but the same shall be collected and paid as though this act had not been passed.

Property taken on execution, where no endorsement is made, how and in what manner disposed of.

Collection of officers fees not to be delayed.

SEC. 9. *Be it further enacted*, That in all cases, where property shall be levied upon, as in this act provided for, it shall be at the option of the defendant or debtor to point out what part or species of his property thus levied upon shall be first sold, when sold for what it will bring in lawful money of the United States. But in case his said property shall be sold at two thirds of the valuation thereof, or for a greater sum, the house and lot, or house and improvements whereon the defendant resides shall be last sold, unless otherwise agreed upon by the plaintiff and defendant, or by the defendant and officer selling the said property.

Deft may point out what part of his property to be first sold.

SEC. 10. *Be it further enacted*, That on all executions

Executions issued before the taking effect of this act, plaintiff may endorse.

now issued, or which may be issued before the taking effect of this act, it shall be lawful for the plaintiff, his agent or attorney, to make an endorsement on such execution as provided by the second section of this act, so that such endorsement be made twenty days at least before the return day of such executions, and in default thereof the same proceedings shall be had on such executions as if issued after the taking effect of this act.

Executions vs. dec'd persons estate may be stayed by executor or administrator.

SEC. 11. *Be it further enacted,* That whenever an execution may be issued against the estate of any deceased person, the executor or administrator shall have all the benefits granted by this act, and no replevin bond shall be construed to make the executor or administrator, or their securities in replevin, liable for the payment of any money where it shall appear that the executor or administrators shall have no effects of the deceased in his or their possession.

Who not entitled to stay proceedings.

SEC. 12. *Be it further enacted,* That nothing in this act contained shall be construed to extend its provisions to any debtor or debtors, whose bail or security has paid money for him or them on execution or judgment; sheriff, coroner, constable, justice of the peace, clerk of courts, state or county treasurer, collectors of taxes, commission merchants, auctioneers, factors, agents or attorneys, who have in their possession any monies belonging to individuals, or to the state, or any county, by virtue of their respective offices, and neglect or refuse to pay over or account for the same, nor to any executors, administrators, or guardian who may have money in his or their possession belonging to or due the estate of any deceased person, but execution issuing against such persons shall be levied and collected in the same manner they could or would have done, had this act not have passed; and it shall be the duty of the clerk of the court, or justice of the peace, to certify on the back of each execution or order of sale issued, that the same issued against the above named persons for not paying over or accounting for money in their hands according to their offices respectively. This act shall take effect and be in force from and after the passage thereof.

Duty of clerk or justice issuing execution against them.

Approved, 28th December, 1821.

CHAP. XXXII.,

AN ACT authorizing a loan to Nezziah Bliss, for the purpose of aiding him in the establishment of Iron Works, within this State.

Preamble.

WHEREAS, in the opinion of this General Assembly, the welfare and prosperity of the state can best be pro-

motivated by encouraging the industrious enterprize of its citizens in the development and bringing into active production those natural resources with which its territory is so bountifully enriched; and whereas inexhaustible mines of the purest iron ore abound in some of the middle counties of this state which remain almost entirely neglected for want of sufficient capitalists to work them to advantage, and Nezhiah Bliss having represented to this General Assembly, that he has made considerable preparation for the establishing of Iron Works in this state, but that his means are not sufficient to enable him at this time to make his establishments on such extensive scale as would ensure a supply of iron adequate to the consumption of the country, unless aided from the resources of the state: Therefore

SEC. 1. *Be it enacted by the General Assembly of the State of Missouri,* That a sum not exceeding fifty thousand dollars of loan office certificates be issued by the auditor of public accounts, and state treasurer, or such other person or persons as may by law be authorized, so to do, and deposited with the commissioners of the fourth loan office district, to be by them delivered on loan to the said Nezhiah Bliss, in such proportions and of such denominations as the said Bliss may require; for the purpose of erecting and carrying on iron works in this state: *Provided,* That the proportions of said loan shall not exceed the sum of five thousand dollars at any one time, nor a greater sum than ten thousand dollars in any one month: *And provided also,* That no part of the said loan shall be made, unless the said Bliss shall produce good and sufficient security, to be approved of by the said commissioners, the Governor and Attorney General, by mortgage on real estate within this state of double the value of the amount of the proportion of the said loan then to be made, which mortgage shall be taken and recorded, and the same proceedings had in relation thereto as is required of mortgagers, by the act entitled "an act establishing loan offices, passed twenty-seventh day of June, eighteen hundred and twenty one; *And provided,* That if the Governor, Attorney General and Commissioners shall have good cause to believe that the said Bliss is not applying the funds in the manner intended by this act, or progressing in the iron works with diligence, then in that case they shall withhold the certificates applied for under the provisions of this act.

SEC. 2. *Be it further enacted,* That the said Bliss shall before he receives any part of the said loan, produce to the auditor and treasurer, or other person or persons au-

Loan Office
Certificates
not exceeding
\$50,000 to be
issued.

And loaned to
Nezhiah Bliss.

In what sums,

How secured.

Deed in fee to be produced before loan to a tract of land not less than 640 acres. authorized as aforesaid, a good and sufficient indefeasible title in fee, to be approved as aforesaid, to a tract of land not less than six hundred and forty acres, whereon the said iron works are to be or may have been erected and established, and shall from time to time, make, execute

To mortgage the same with buildings which may be erected. and deliver such deed or deeds of mortgage on the said tract of land, the buildings and works erected or to be erected thereon, as may be required by the said commissioners, Governor and Attorney General as aforesaid, to secure the payment of the said several sums so loaned,

To be refunded in ten annual instalments.

with interest thereon at the rate of six per centum per annum, and moreover, as additional security for the faithful discharge of the conditions of the bond directed to be taken under the authority of the third section of this act, and to refund the two per centum accruing on the certificates in equal annual instalments of one tenth part of the whole amount loaned, with the whole amount of interest accruing thereon, at the times of making the said several payments, which said deed or deeds of mortgage shall be executed, and the same proceedings had in relation thereto, as is required by the before recited act:—

Proviso.

Provided however, That no part of the said loan or of the interest accruing thereon, shall be required to be paid within a less time than two years from and after the date of making the first proportion thereof.

To give bond and security to Gov. for establishing iron works within two years after 1st April next.

SEC. 3. *Be it further enacted,* That the said Bliss shall, before receiving any part of the said loan, enter into bond with two or more sufficient securities, to be approved of as aforesaid, payable to the Governor or his successors in office, to the use of the state, conditioned that he will, within two years from and after the first day of April next, erect and put into complete operation on the said tract of land, one iron furnace, one forge, one rolling and slitting mill, and that from and after the erection and putting into operation of the said iron works until the first day of April, eighteen hundred and thirty, and until the whole of the several sums authorized to be loaned, with all interest thereon, shall have been paid, he will furnish to the inhabitants of this state, bar iron, at a price not exceeding ten cents per pound, payable in specie or loan office certificates, at par, at the option of the purchaser, and hollow ware of every description at as reduced prices as it can be had in any of the western states or territories, payable also in loan office certificates, at par: the said bar iron and hollow ware to be delivered at the bank of the river Mississippi, or within half a mile of the same, at points between the mouth of the Missouri river and the town of Cape Girardeau.

Price of bar iron and of hollow ware.

Where deliverable.

SEC. 4. *Be it further enacted,* That if the said Bliss, his heirs, executors, administrators, or assigns, shall at any time refuse to sell iron or hollow ware, as provided for in the third section of this act, or at the works at a price equivalent to the price provided for in the third section of this act, he, the said Bliss, his heirs, executors, administrators or assigns, shall forfeit and pay to the party injured treble damages, to be recovered by action on the case, before any court having competent jurisdiction thereof: *Provided,* That nothing herein contained shall be construed to make the said Bliss, his heirs, executors, administrators or assigns, liable for damages, unless he or they may have iron or hollow ware unsold in his or their possession, and unless such iron and hollow ware if sold, may have been sold for the purpose of evading the provisions of the said third section of this act.

Penalty for refusing to sell at established price.

Proviso.

SEC. 5. *Be it further enacted,* That in case of a breach on the part of the said Bliss of any of the covenants and agreements of the said mortgages or bond directed by this act to be taken, on default of payment of any of the sums by this act directed to be loaned, with interest thereon as aforesaid, it shall be the duty of the Governor for the time being to put the said mortgages, bond or bonds in suit, and proceed to judgment and execution thereon, to and for the use of the state, with as little delay as possible.

Failure on the part of Bliss to comply with covenants, Gov. to sue.

SEC. 6. *Be it further enacted,* That the said annual payments of the sums hereby authorized to be loaned, with the interest thereon as aforesaid, shall be made as is hereinafter directed, to wit: in specie, loan office certificates, or any other evidences of public debt of this state, at par, as he the said Bliss may determine. *Provided,* That the said Bliss may at any time within the said term of ten years, pay the whole amount of the said loan, with the interest which may have accrued thereon, in the manner aforesaid; and it shall be the duty of the Governor for the time being, upon payment being made as aforesaid of the full amount of the said loan, and the interest accrued thereon, to give to the said Bliss such release and acquittance on the said mortgages, deed or deeds, as will forever discharge and annul the same, and shall bar all actions brought, or to be brought, on the same: *Provided however,* That the said Bliss shall not be charged with interest on the proportion of the loan by him received from time to time under the authority of this act, for the term of two years after the said several loans shall be respectively made to him: *And provided also,* That if the said Bliss shall not, before the session of the

Annual instalments, in what payable.

Whole amt. of loan may be paid at any time.

Gov. to grant release.

Interest not to be charged until the expiration of two years.

Failure on the
part of Bliss,
Gov. to report
to Gen. As-
sembly.

next General Assembly, apply for part of the sum authorized to be loaned, and give satisfactory evidence to the Governor that he will carry into effect the object of this act, the Governor shall report the same to the General Assembly, and the sum authorized to be loaned shall be given on the conditions of this act to some other person capable of carrying into effect the objects for which this act was passed, any thing in this act to the contrary notwithstanding. This act shall take effect and be in force from and after the passage thereof.

Approved, 29th December, 1821.

CHAP. XXXIII.

AN ACT releasing Jeremiah Connor from a judgment obtained against him in favor of the late District of St. Louis.

Preamble.

IT appearing to the satisfaction of the General Assembly of this state, that the Court of Common Pleas of the District of St. Louis, in the late Territory of Missouri, at their March term of the year eighteen hundred and eleven, did render judgment in favor of the said district against Jeremiah Connor, late sheriff and treasurer of said district, for the sum of six hundred thirty-eight dollars and fifty seven cents, with ten per centum per month as a fine to the district, which judgment was null & void *ab initio* and was afterwards removed by writ of error from the said Court of Common Pleas to the General Court, and there affirmed because exceptions had not been filed, in the said Court of Common Pleas; and at the time of the rendition of the judgment, the said Jeremiah Connor as sheriff and treasurer aforesaid did not owe the district, or any other person for the benefit thereof, a greater sum than one hundred sixty two dollars and twenty seven cents, which sum he afterwards, on the twenty-fifth day of March, in the year of eighteen hundred and fourteen, paid to Richard S. Thomas, Esq. by virtue of his appointment by the General Court of the said territory, thereunto authorized by law to receive the same, and it being a matter of doubt whether the said Jeremiah Connor can, according to the present rules of law and equity, be relieved in the courts of this state against the said judgment: Therefore

Release from
judgment and
decree of
chancery
court.

Be it enacted by the General Assembly of the State of Missouri, That the said Jeremiah Connor be released, and he is hereby released and fully discharged from the judgment aforesaid, and also from the decree of the Court of Chancery therein, and all interest which may have

accrued, and also from all liability thereon either in law or equity.

Approved, 29th December, 1821.

CHAP. XXXIV.

AN ACT fixing the permanent seat of government.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the four sections of land situate on the south side of the Missouri river, in fractional township forty-four north, in range eleven west of the fifth principal meridian, to wit: the fractional sectional sections six, seven and eight, the entire sections seventeen and eighteen, and so much of the north part of sections nineteen and twenty, as will make up the entire four sections, selected by the commissioners on behalf of the state, according to the provisions of the constitution, and in pursuance of an act of congress, approved the sixth day of March, one thousand eight hundred and twenty, be, and the same are hereby accepted for the use and benefit of the state.

Four sections
of land in T.
44 N. R. 11 W.
accepted.

SEC. 2. *Be it further enacted,* That the permanent seat of government of this state shall be located upon the said four sections of land accepted as aforesaid, and a town shall be laid out thereon, and the lots sold in such manner as shall be prescribed by law.

Permanent
seat of govt. to
be located
thereon, and
town laid out.

SEC. 3. *Be it further enacted,* That it shall be the duty of the Governor to transmit an authenticated copy of this act immediately after the passage thereof to the surveyor of the United States for the states of Illinois and Missouri, and territory of Arkansas.

Copy of this
act to be trans-
mitted to sur-
veyor general.

Approved, 31st December, 1821.

CHAP. XXXV.

AN ACT for the relief of James Jones, sheriff and collector of Pike County.

WHEREAS, it appears to this General Assembly, that Jas. Jones, sheriff of the county of Pike, stands charged as collector of said county, by the auditor of public accounts with taxes for the years of eighteen hundred nineteen and twenty, due on seventeen thousand nine hundred and six arpens of land, belonging to the estate of Charles Gratiot, deceased, which the deceased in his life time, nor his representatives since his death, never claimed but about three thousand three hundred arpens of land, upon which

Preamble.

Released from
payment of
certain taxes
and the 20 per
centum.

said land the executor of said deceased has paid to said collector the legal taxes due thereon: Therefore,

Auditor to set-
tle account.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That James Jones, collector of the county of Pike, be, and he is hereby released and exonerated from the payment of the surplusage of taxes as charged to him by the auditor of public accounts, on lands said to belong to the estate of Charles Gratiot, deceased, in the county of Pike, together with the twenty per centum thereon charged against said collector: and the auditor of public accounts is hereby authorized and empowered to settle, adjust and liquidate the accounts of said collector of Pike county according to the provisions of this act. This act shall take effect and be in force from and after the passage thereof.

Approved, 1st January, 1822.

CHAP. XXXVI.

AN ACT extending the permanent limits of the County of Boone.

Appendage to,
included in
cty. of Boone.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That all that part of the county of Boone which lies due north of said county and now forms an appendage to said county of Boone, be, and the same is hereby declared to be permanently included in said county of Boone. This act shall be in force from and after the passage thereof.

Approved, 2d January, 1822.

CHAP. XXXVII.

AN ACT authorizing an amount of Loan Office Certificates to be placed in the State Treasury for the purpose of redeeming the Certificates drawn by the Auditor of Public Accounts on the State Treasurer.

\$50,000 loan
office certi-
ficates to be is-
sued and de-
posited in trea-
sury.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the Auditor of Public Accounts, and the State Treasurer, under the direction of the Governor, shall issue fifty thousand dollars of Loan Office Certificates and deposite the same in the State Treasury for the purpose of redeeming the Auditors Certificates, which have or may hereafter be drawn on the State Treasurer, and it shall be the duty of the State Treasurer to make report to the next General Assembly of the amount of the Loan Office Certificates by him applied for the purpose of redeeming the Auditors Certificates agreeably to the provisions of this act. This act

Treasurer to
report.

shall take effect and be in force from and after the passage thereof.

Approved, 2d January, 1822.

CHAP. XXXVIII.

AN ACT for removing the seat of justice of the county of Lincoln.

WHEREAS, it appears to this General Assembly, that the inhabitants of the county of Lincoln suffer great hardships and inconvenience, occasioned by their seat of justice for said county having been located at the town of Monroe, which is situated in the south east corner thereof, and a great majority of the citizens of said county having petitioned present General Assembly for the passage of a law for the removal of the said seat of justice at the centre, or some eligible spot not exceeding three miles of the said centre :

SECTION 1. *Be it therefore enacted by the General Assembly of the State of Missouri;* That Robert Guy, of the county of Pike, that Francis Howel, sen. of the county of St. Charles, that William T. Lamme, of the county of Montgomery, be, and they are hereby appointed commissioners, with full power and authority, to point and fix upon the most suitable scite at the centre, or within three miles of the said centre, of the county of Lincoln, whereon to erect a court house and jail for said county, and the place whereon they, or a majority of them, shall agree on, shall be the permanent seat of justice for the said county of Lincoln.

SEC. 2. *Be it further enacted,* That the said commissioners, before they proceed to perform the duties hereby assigned them, shall take an oath or affirmation before some justice of the peace, well and truly and faithfully to perform the duties assigned them by this act.

SEC. 3. *Provided always nevertheless, and it is hereby enacted,* That the circuit and county courts to be holden for the said county of Lincoln, shall continue to be holden in the said town of Monroe, until the said permanent place shall be fixed on by the said above named commissioners, and a court house and jail erected, from which time all the courts for the said county shall be held at the said place so fixed on.

SEC. 4. *Be it further enacted,* That Andrew Miller, Samuel Gipson, and Thomas Blanton, of the said county of Lincoln, be, and they are hereby appointed commissioners of the court house and jail to be erected on the said scite, so fixed on by the said above named commis-

Preamble.

Commissioners appointed.

Their powers and duties.

To take oath.

Courts continued at Monroe till permanent place is selected.

Comms. of court house & jail appointed.

Further power and duty of first named comm'rs.

Powers and duties of court house and jail comm'rs. regulated by law of 1818.

To give bond and security.

Vacancies how supplied.

Comm'rs how to be discharged.

Lots remaining unsold to be released to Gov for the benefit of the county.

sioners, for the new seat of justice of the said county of Lincoln: and they, or a majority of them, are fully authorized and empowered to purchase, or receive as a donation; such lot or parcel of land, not less than fifty, nor more than two hundred acres, as the said first named commissioners shall have so fixed upon for the scite of the aforesaid public buildings; and to take and receive to their and their successors in office, for and to the use of the said county of Lincoln, from the person or persons of whom they may receive a donation, or make a purchase of land as aforesaid, a good and sufficient warrantee deed or deeds, in fee simple, which said deed or deeds shall be made to them in trust for the said county of Lincoln: and the said last above named commissioners shall, as respects the public buildings to be erected on the said scite so fixed upon for the said new seat of justice of the said county of Lincoln, purchasing the land whereon the same shall be so fixed, laying off the same into squares or lots, and disposing of or selling and making conveyances thereof to purchases, perform and fulfil the same duties, and be vested with the same powers and authorities, and in all other things comply with and conform to the provisions of the fourth section of the act entitled "an act for the establishing of the county of Lincoln," approved 14th December, 1818. And the said last named commissioners shall give bond with security after taking the oaths, and settle their accounts in the manner pointed out by the 5th section of the said recited act; and in case a vacancy shall happen in the office of one or more of the said commissioners, it shall be supplied in the manner pointed out by the section of the same act; and the said commissioners shall be discharged and exempted from the duties of their office in the manner pointed out by the seventh section of the same act. And any lots or lands remaining unsold by the said commissioners shall be by them released to the Governor of the state in trust for the said county, in the manner pointed out by the same seventh section of the said recited act. This act shall take effect from and after the passage thereof.

Approved, 2d January, 1822.

CHAP. XXXIX.

AN ACT establishing the County of Clay.

Boundaries.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That a new county shall be established as follows: beginning in the middle of the main channel of the Missouri river, south of the range line passing

between range twenty-nine and thirty west of the fifth principal meridian, thence north and with said range line pursuing the course thereof, when continued to the northern boundary line of this state, thence west with the northern boundary line to the north-west corner of this state, thence south with the said boundary line, due south to the Missouri river and to the middle of the main channel thereof, thence down the middle of the main channel thereof to the place of beginning, which shall be called the county of Clay.

SEC. 2. *Be it further enacted,* That John Hutchins, Henry Estes, Enos Vaughan, Wyatt Atkins and John Poor, be, and are hereby appointed commissioners, with power to fix upon the most suitable place in said county whereon to erect a court house and jail, and the place whereon they or a majority of them shall agree, shall be the permanent seat of justice for the said county of Clay.

Comm'rs. appointed to fix seat of justice.

SEC. 3. *Be it further enacted,* That the power and duties of the said commissioners within the county of Clay shall be the same as the powers and duties assigned by an act entitled "An act defining the limits of Howard county and laying off new counties within the limits of said county as heretofore defined," to the commissioners appointed to point out and fix upon the most suitable place in the county of Ray whereon to erect a court house and jail for said county of Ray.

Their powers and duties.

SEC. 4. *Be it further enacted,* That the said commissioners or a majority of them, be, and are hereby empowered to receive as a donation or to purchase the land by them selected, and to lay off the same into lots or squares, and to expose them to public sale under the same restrictions as were imposed by the before recited act, on the commissioners of Ray county, and the powers and duties of the judge of the circuit court, shall be the same in the said county of Clay, as in the said county of Ray.

SEC. 5. *Be it further enacted,* That the courts to be holden in the county of Clay, shall be holden at the house of John Owens, until said commissioners shall choose and fix on a temporary seat of justice for said county; and after the said commissioners have selected a temporary seat of justice in said county, the courts to be holden for said county shall be holden at the temporary seat of justice until a house for holding courts and a jail is provided at the permanent seat of justice for said county of Clay.

Courts, where to be holden.

SEC. 6. *Be it further enacted,* That all executions to be issued after the taking effect of this act, from the circuit court of the county of Ray, shall be directed to the proper officer of the county of Clay, if the person against

Executions issuing from circuit court of Ray to be directed to proper officer in Clay county

Accounts of
ex'rs. adm'rs.
and guardians
how & where
settled.

Justices of the
peace and con-
stables in Clay
city to contin-
ue in office.

Cty. court to
appoint col-
lector.

His duty.

whom they may issue reside within said county of Clay ; and such executions shall be executed and returned by him in the same manner as if issued by the clerk of the county of Clay, and all accounts of executors, administrators and guardians, now pending in the county of Ray; if such executors, administrators or guardians reside in the said county of Clay, shall at the request of such executors, administrators or guardians, be certified by the clerk of the said county of Ray with the proceedings had thereon, to the clerk's office in the county of Clay, and shall stand ready for trial or settlement, as if they had commenced therein; and all justices of the peace and constables now residing in the limits of said county of Clay, shall continue to execute all the duties of their office as justices and constables in the county of Clay; and it shall be the duty of the county court for said county of Clay, at the first term of said court, to appoint a collector for said county who shall immediately enter upon the duties of his office; and the taxes for the said county of Clay shall be collected and accounted for by the collector of said county in the same manner as is now required of the collector of Ray county. This act shall take effect and be in force from and after the passage thereof.

Approved, 2d January, 1822.

CHAP. XL.

AN ACT concerning Clerks' Offices.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the Judges of the circuit courts and the Justices of the county courts, in the several counties respectively, may by order of the court, permit the clerks of said courts to keep their offices, within half a mile of the place of holding courts in the several counties, for such length of time only, as local circumstances may render such order necessary and expedient.

Approved, 7th January, 1822.

CHAP. XLI.

AN ACT ascertaining the fees of the several officers of the State of Missouri, regulating the costs on indictments; and for other purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That no civil officer or other person whose fees are herein after ascertained, shall at any time hereafter exact, ask or demand for his services, any other, or greater fee than is hereinafter provided.

SEC. 2. *Be it further enacted,* That the clerks of the

county courts shall be entitled to ask, demand and receive for their respective services, the following fees: For copies of records, for every hundred words, ten cents; for copying the assessment and making state and county tax lists, for each hundred words, ten cents; for every search in record, twelve and a half cents; for reading and filing every petition and recording the order made thereon, thirty-seven and a half cents; for granting letters of administration or testamentary, and recording the same, drawing and taking bonds, filing the same, administering the legal oath or affirmation, and issuing the certificate of the appointment of appraisers, two dollars; for entering settlement of the accounts of executors or administrators, seventy-five cents; for issuing a citation to executors administrators or guardians, fifty cents; for taking and filing a renunciation, twelve and a half cents; for taking proof of a will, thirty-seven and a half cents; for every certificate and seal, thirty cents; for taking the proof of a codicil if separate from the will, thirty-seven and a half cents; for filing each paper, six and a fourth cents; for taking constables bond, making entries of appointment, &c. fifty cents; for all the services of licensing a tavern, one dollar; for all the services and granting licenses to ferrymen, one dollar; for all the services and granting licenses to retailers of merchandise, and of wines and spirituous liquors, one dollar; for reading, filing and entering a petition for a road and recording the order of the court, to be paid by the applicant, fifty cents; for copying the petitions, orders, plat and surveys of roads, and all other parts and records appertaining thereto, for every hundred words, to be paid by the applicant, six and a fourth cents; for entering every motion and rule, six and a fourth cents; for every copy of motion and rule, with or without a seal, twenty five cents; for swearing and entering each jury, twenty five cents; for swearing each witness or other person, three cents; for entering every verdict, twelve and a half cents; for entering every judgment, fourteen cents; for entering satisfaction of record, twelve and a half cents; for issuing every subpoena, with four names or less, twenty-five cents.

SEC. 3. *Be it further enacted,* That the several sheriffs shall ask, demand and receive for their services the following fees: for serving every capias, summons or declaration in ejectment, and returning the same, for each defendant, one dollar; for taking and returning every bail bond, fifty cents; for serving every writ of scire facias or attachment, for each defendant, one dollar; for executing a writ of enquiry, drawing inquisition, and returning the same, one dollar and fifty cents; for committing any per-

Fees of clerks
of city courts.

Sheriffs fees.

son to jail on civil process, fifty cents; for discharging every commitment in civil cases, fifty cents; for committing criminal to jail, seventy five cents; for furnishing prisoner with board, each day, thirty seven and a half cents; for serving every notice or rule of court, notice to take depositions and citations on executors, administrators and guardians, each, fifty cents; for every trial in a criminal cause or confession, one dollar and thirty three cents; for every trial in a capital cause, three dollars; for executing every death warrant, ten dollars; for every return of *non est* on original writs or executions, fifty cents; for calling every action at each term, ten cents; for calling each party, ten cents; for calling each jury, twenty five cents; for calling each witness, six and a fourth cents; for summoning each grand jury, five dollars; for summoning each special jury to try forcible entry and detainer, or to assess damages, four dollars; for attending each county court, per day, one dollar and fifty cents; for summoning each witness, fifty cents; for commission, receiving and paying money on execution, where lands or goods have been taken into custody, advertised and sold, or where the defendant's body has been taken for want of lands, tenements, goods and chattels, three and a half per cent on the first two hundred dollars, and two per centum on all sums above that sum, and one half of such commission where the money is paid to the sheriff without seizures or where the lands or goods seized or taken shall not be sold, and no other fee or reward shall be allowed on any execution except for the expense of keeping and removing the property taken. It shall be the duty of the party on whose application a writ, execution or subpoena has issued from the supreme court or court of chancery, to cause the same to be returned to the supreme court or court of chancery without fee, unless the supreme court or court of chancery shall, for special reasons, order the personal attendance of the sheriff, in which case he shall be allowed five cents for each mile going and returning from the court house of the county in which he resides, to the place where the supreme court or court of chancery is held.

Coroners fees. SEC. 4. *Be it further enacted*, That each coroner shall be entitled to the same fees as are allowed by law to sheriffs, where he performs the duties of a sheriff, and to demand and receive the following fees for other services; for the view of each dead body, three dollars; for summoning each jury of inquest, three dollars; for swearing each jury, fifty cents; for summoning and qualifying each witness, twenty-five cents; which fees, together with the

jurors and witnesses fees in all inquests, shall be allowed by the county court and paid out of the county treasury as other demands are paid.

Sec. 5. *Be it further enacted*, That justices of the peace shall be entitled to ask, demand and receive the Justices fees. following fees for their services; for administering every oath, six and a fourth cents; for every summons or warrant, in civil cases, eighteen and three fourth cents; for every subpoena, including four names or less, eighteen and three fourth cents; for issuing every attachment, twenty-five cents; for entering judgment in every civil case, thirty-seven and a half cents; for issuing each execution, twenty-five cents; for making certified copies on appeals or certiorari, for each hundred words contained therein, six and a fourth cents; for taking and entering special bail, twelve and an half cents; for issuing a bail piece, twenty-five cents; for granting and drawing a writ of *habeas corpus*, and deciding thereon, to each justice, one dollar and fifty cents; for issuing a *scire facias* against bail to renew a judgment, twenty-five cents; for issuing a venire for a jury, in each civil case, twenty-five cents; for taking the acknowledgment of a deed or power of attorney, twenty-five cents; for solemnizing marriages, two dollars; for signing and certifying depositions, if ready, eighteen and three fourth cents; if written by the justice, for every hundred words in addition, six and a fourth cents; for issuing a summons on a complaint of forcible entry and detainer or forcible detainer and holding over, to each justice, seventy-five cents; for a venire to summons a jury, in cases of forcible entry and detainer, to each justice, twenty-five cents; for issuing every writ of restitution, to each justice, fifty cents; for taking and entering a verdict on forcible entry and detainer, to each justice, twenty-five cents; for issuing an order to view a fence, twenty-five cents; for issuing a warrant to assess damages for burning fences and prairies, twenty-five cents; for a view of each dead body, the same fees as the coroner for the like services.

Sec. 6. *Be it further enacted*, That constables shall be Constables fees. entitled to charge and receive the following fees for their services: for serving a warrant, in a criminal case, for each defendant, fifty cents; for serving a warrant or a summons in a civil case, for each defendant, twenty-five cents; for summoning and swearing each jury to try the right of property and taking verdict, one dollar; for summoning each jury before a justice, one dollar; for taking criminal or debtor to jail, seventy-five cents; for serving or giving notice of each execution, fifty cents; for sum-

moning every witness, twenty cents; for receiving and keeping property taken on execution, such compensation as may be awarded by the justice from whom the process issued on statement to him by the constable on oath; for collecting or paying over to the plaintiff for all sums collected, three per centum.

Fees of sec. of state.

SEC. 7. *Be it further enacted*, That the Secretary of State shall be entitled to ask, demand and receive, for every certificate to authenticate any instrument of writing to which the seal of state may be affixed, the sum of one dollar; and ten cents for every hundred words contained in any copy of papers certified from his office, unless it be on the business of the state.

Return of process, in what manner made.

SEC. 8. *Be it further enacted*, That it shall be the duty of each sheriff, coroner and constable, in the return made by him on any writ, summons, execution or other process, to state at full length the time when, and place or name of the township and county where such writs, summons, execution or other process was served, and how; and any sheriff, coroner or constable, neglecting or refusing to comply with this requisition, shall not be entitled to demand or receive any fee for the service or execution of the same.

Fees of each officer to be endorsed on execution.

Clerks to keep fee books.

may be given in evidence.

Fee bill to be made out if party demand it.

SEC. 9. *Be it further enacted*, That the clerks of the respective counties shall endorse on every execution by them issued, the fees due to each officer and any other person, distinctly, and shall at the time of issuing an execution or fee bill, or of recovering any fees due to them by any party or other person, enter in a particular book the several items, by words at full length for which he has charged, and deliver to any party or person from whom such fees are due on demand, a full and complete copy of the entry made in said book without any compensation for the same; and whenever any trial is instituted against any clerk or other officer for having asked, demanded or taken illegal fees, they may give in evidence on trial, the book or books in which such entries are made; and every sheriff, coroner, justice of the peace, constable, and every other officer or person to whom fees may be due, and owing as recited in this act, shall not be collected or paid by any person against whom the same may be exhibited, either on execution, fee bill or otherwise, until the sheriff, coroner, justice, constable, other officer or person shall produce and deliver unto the person owing or chargeable with the same, if demanded, a fee bill or account in writing; containing in words at length the particular items for which such fees are charged, signed by

such sheriff, coroner or other officer or person, to whom the same may be due.

SEC. 10. *Be it further enacted*, That if any officer shall hereafter ask, charge, demand or receive any more or greater fees for their services, than is herein before set down, ascertained and established, or if any of the officers aforesaid shall ask, demand or receive any of the fees herein before recited and established, where the business which such fees are chargeable shall not have been actually done and performed (to be proved by the fee book of such person upon his oath or affirmation) such officer for every such offence shall forfeit and pay to the party injured, or against whom the same shall have been charged, besides such fee or fees, five dollars for every particular article, item or fee asked, demanded, charged or received, to be recovered with costs on action of debt, before any justice of the peace within this state; provided the same be sued for within twelve months from the time the offence shall have been committed.

Penalty for receiving greater fees, or demanding them before services are rendered.

To be sued for within twelve months.

SEC. 11. *Be it further enacted*, That loan office certificates, or the certificates issued by the state auditor, shall be a lawful tender for the payment of all fees allowed to any officer or other person named in this act, and for the payment of all fines and forfeitures accruing to the state, or any county treasury; and where any person shall be convicted and unable to pay the costs attending such conviction, or where any person shall be acquitted, all such necessary costs shall be paid out of the state treasury, if the fine accrued to the state, if not, all such costs shall be paid out of the treasury of the county to which the fine would have accrued.

Loan office & auditor's certificates legal tender in payment of fees and fines.

SEC. 12. *Be it further enacted*, That an act ascertaining the fees of the several officers and persons therein named, and regulating the payment of costs on indictments, passed the seventh day of July, one thousand eight hundred and seven, except the second, fourth, eleventh and twentieth sections thereof, "an act supplementary to the act entitled an act ascertaining the fees of the several officers and persons therein named, and regulating the payment of costs on indictments, and for other purposes" passed the fifth of November eighteen hundred and eight, except the first section thereof, "an act explanatory of the act entitled an act ascertaining the fees of the several officers therein named and regulating the payment of costs on indictments" passed the thirtieth of October, eighteen hundred and ten; so much of the fifteenth section of an act, to amend an act entitled an act regulating the mode of judicial proceedings in certain cases, and ex-

Former acts repealed.

tending certain powers to the General Court, passed twenty-second of January, eighteen hundred and sixteen, as relates to fees of solicitors, "an act supplementary to an act entitled an act ascertaining the fees of the several officers and persons therein named, and regulating the payment of costs on indictments, passed the eighteenth of January, eighteen hundred and sixteen, and all and every act or part of any act allowing fees to be charged, which fees are provided for and ascertained in this act, shall be, and the same are hereby repealed.

SEC. 13. *Be it further enacted*, That this act shall take effect and be in force from and after the first day of February next.

Approved, 7th January, 1822.

CHAP. XLII.

AN ACT to amend an act entitled an act for the establishment of Loan Offices.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That hereafter whenever the commissioners of the respective loan offices of this state are not convinced that the estate offered to be pledged on mortgage as security for any loan applied for at any of the said loan offices, is worth twice the amount of the loan applied for, it shall and may be lawful for them to require of the applicant to produce a certificate from the appraisers appointed to value property taken on execution in the township in which the estate lies, certifying under their oath of office what they believe to be the true value of such estate.

SEC. 2. *Be it further enacted*, That before any loan shall hereafter be made on any pledge of real estate, the applicant shall deposit a mortgage with the recorder of the proper county, who shall endorse thereon the time when such mortgage was received for record, and certify to the commissioners a copy thereof under the seal of his office, which mortgage thus deposited shall be a lien upon the estate pledged, until the whole of the loan and re-loans made thereon, and interest thereon, are paid to the state, and all mortgages heretofore made and duly recorded shall be a lien upon the estate mortgaged until the whole of the loan, re-loan and interest thereon shall have been paid, any thing in any law to the contrary notwithstanding; and the clerks of the several loan offices shall keep on file the copies of mortgages certified as aforesaid, and in case the commissioners refuse to loan

Commissioners doubtful as to value of property, may require certificate from valuers.

Applicant to deposit mortgage with recorder, and he to certify a copy to com'rs.

Such copy to be kept on file.

the sum applied for, or in case the whole of the principal and interest on any mortgage is paid, the clerk of the said loan office shall deliver over to the borrower or his agent, a copy of the mortgage aforesaid, and endorse a release of the mortgage, which copy when delivered to the recorder of the proper county, shall be by him kept on file in his office, and he shall thereupon enter satisfaction upon the margin of the record of such mortgage, which shall thereafter forever defeat and release the same, and shall likewise bar all actions brought or to be brought thereupon, or upon the note or notes accompanying the same or any renewal thereof: *Provided always*, That all costs which may accrue or have accrued shall be first paid.

Duty of clerk and recorder in releasing mortgages.

Costs to be first paid.

SEC. 3. *Be it further enacted*, That hereafter all notes given for loans made and secured by mortgages, shall be in the form following, to wit: "I promise to pay to the state of Missouri, on the _____ day of _____

Form of note where loan is made and secured by mortgage.

the sum of _____ dollars, and two per cent. per annum, the interest accruing on the certificates borrowed, from the first day of October, eighteen hundred and twenty one, at _____ for the securing the payment of which I did on the _____ day of _____ execute a mortgage to the said state, of certain lands or houses and lots (as the case may be) in the county of _____ given under my hand this _____ day of _____ eighteen hundred and _____.

And the form of a note on personal security shall be as follows: — "We jointly and severally promise to pay to the state of Missouri, on the _____ day of _____

Form of note on personal security.

the sum of _____ dollars, and the two per cent. per annum, the interest accruing on the certificates borrowed, from the first day of October, eighteen hundred and twenty one, at _____ for value received this _____ day of _____ eighteen hundred and _____.

SEC. 4. *Be it further enacted*, That the rate of interest to be charged by the commissioners at the several loan offices; shall be six per cent. per annum on the amount of the certificates loaned, in which amount the two per cent. interest accruing on the certificates shall never be calculated: *Provided*, This act shall always be construed to require of the borrower to refund to the state the amount of the two per cent. interest accrued on

Rate of interest.

the certificates on any interest or instalment paid into the several loan offices.

Certificates to bear date, 1st October, 1821.

Denomination.

Application not made within six months by persons entitled to loans,

may be loaned to any applicant in district

Penalty for false swearing.

Ferryman to take L. O. certificates at par.

Lands within the state may be mortgaged in the district where applicant resides.

SEC. 5. *Be it further enacted*, That the auditor and treasurer of the state, shall make all the loan office certificates which they may issue, to bear date on the first day of October, eighteen hundred and twenty-one, and they are hereby required, that of the amount authorized to be issued, twelve thousand dollars at least, shall be of a denomination not less than twelve and an half cents, nor more than fifty cents: *Provided*, That the signature of the auditor alone may be affixed to such certificates; that it shall be the duty of the commissioners of the several loan offices, to retain in their respective offices, the several sums now appropriated and apportioned by law for each county, for at least six months, to await the applications for loans from such counties, and the clerks of the several loan offices, shall cause public notice to be given, that unless applications shall be made by the inhabitants of the several counties for their proportion of the amount of loan office certificates, within six months from the date of such notice, that the certificates remaining in the loan offices will be loaned to any person residing in said district making application for the same, agreeable to the provisions of this act, and the act to which this is supplementary.

SEC. 6. *Be it further enacted*, That if any person shall falsely swear or affirm in any of the cases wherein an oath or affirmation is required to be taken by this act, or by the act to which this is an amendment, such person or persons upon conviction thereof, shall suffer all the pains and penalties to be inflicted for wilful and corrupt perjury.

SEC. 7. *Be it further enacted*, That if any licenced ferryman, or the agent of any licenced ferryman, whose licence shall be granted after the taking effect of this act, shall refuse to receive loan office certificates at par in payment for ferriage, the licence of such ferryman shall be thereupon forfeited, never thereafter to be renewed.

SEC. 8. *Be it further enacted*, That any person owning lands situated in any of the loan office districts in this state, may mortgage the same to secure the payment of a loan in the district in which he shall reside, under the same regulations, limitations and restrictions, as are pointed out in this act and the act to which this is supplementary, securing the payment of a loan by mortgage on lands situate in the district where the applicant resides.

SEC. 9. *Be it further enacted*, That the several loan

offices shall not be kept open more than two days in each week, unless for good cause the commissioners shall otherwise direct. This act to be in force from and after the passage thereof.

Loan offices
kept open two
days in each
week.

Approved, 7th January, 1822.

CHAP. XLIII.

AN ACT concerning assigned bonds, bills, and promissory notes.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That all bonds, bills and promissory notes for money or property shall be assignable, and the assignee may sue for them in the same manner as the original holder thereof could do: and it shall and may be lawful for the person to whom the said bonds, bills, or notes are assigned, made over and endorsed, in his own name, to commence and prosecute his action at law, for the recovery of the money or property mentioned in such bonds, bills or notes, or so much thereof as shall appear to be due at the time of such assignment, in like manner as the person to whom the same was made payable might or could have done; and it shall not be in the power of the assignor, after assignment made as aforesaid, to release any part of the debt or sum really due by the said bonds, bills or notes: *Provided,* Nothing in this section shall be so construed as to change the nature of the defence in law that any defendant may have against the assignee or original assignor.

Bonds, bills &
promissory
notes assigna-
ble.

Assignee may
sue in his own
name.

Nature of de-
fence not to
be changed.

SEC. 2. *Be it further enacted,* That no assignor of any bond, bill or promissory note, for the payment of money, or property, shall hereafter be liable to the action of the assignee of any such bond, bill or promissory note, unless such assignee shall have used due diligence by the institution and prosecution of a suit at law against the maker of such bond, bill or promissory note, for the recovery of the money or property due thereon, or damages in lieu thereof: *Provided nevertheless,* That if it shall appear to the satisfaction of the court or jury that the institution of such suit would have been unavailing, such assignee may recover against the assignor or assignors, as if this act never had passed.

Assignor not
to be liable
unless assignee
uses due dili-
gence.

Proviso.

SEC. 3. *Be it further enacted,* That this act shall not be so construed as to affect any suit now pending, or in any respect to alter or change the existing laws respecting bills of exchange.

Bills of ex-
change or
suits pending
not affected.

SEC. 4. *Be it further enacted,* That the fifty third section of an act establishing courts of justice and regulating

Former act
repealed.

judicial proceedings, passed by the Governor and Judges the third day of July, eighteen hundred and seven, be and the same is hereby repealed. This act shall commence and be in force from and after the passage thereof.

Approved, 7th January, 1822.

CHAP. XLIV.

AN ACT for the relief of Louis Des Thiers.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That there be released to Louis Des Thiers, his heirs and assigns, forever, all the right, title and interest of the state of Missouri to a tract of five thousand arpens of land, situate in the county of Montgomery, and granted to Daniel Clark. Also, to a tract of seven thousand and fifty six arpens of land in the county aforesaid, granted to Auguste Chouteau, and taxed as the property of Richard R. Venables and Charles F. Delaurier, upon the payment into the state treasury of the double tax on said lands for the years eighteen hundred and nineteen and eighteen hundred and twenty, together with the interest and all costs of sale, which said tracts of land for those years were taxed double and struck off to the state.

Two tracts of land to be released to Louis Des Thiers on payment of double tax for 1819 & 1820.

SEC. 2. *Be it further enacted,* That upon the payment of the double tax, with interest and cost, as aforesaid, to the treasurer of the state, he shall give a receipt for the same, and certify the fact to the Governor, who shall thereupon execute a deed of release or quit claim of all the right, title and interest of the state in and to the said tracts of land, to him, the said Louis Des Thiers, his heirs and assigns forever: *Provided,* The said Louis Des Thiers produce sufficient evidence to the Governor that the said lands properly belong to him if released by the state.

On payment into treasury,

Gov. to execute deed of release.

Approved, 31st January, 1822.

CHAP. XLV.

AN ACT supplementary to an act regulating proceedings on injunctions.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That upon the filing of an answer it shall be in order at any time in term, to move for the dissolution of the injunction, and upon such motion it shall be lawful for the parties to introduce testimony to support the bill and answer, and also to disprove the bill or an-

Dissolution may be moved at any time in term and testimony introduced to

swer; and the court shall decide such motion upon the weight of testimony, without being bound to take the answer as absolutely true, and if after such dissolution is moved for, the plaintiff in the bill will satisfy the court, by his own affidavit; or by the affidavit of any disinterested person, that the answer (or any material part thereof to be specified in such affidavit) is untrue, and that he has witnesses whose testimony he believes he can procure by the next term of the court, who will disprove the said answer, or such material part thereof as shall be specified as aforesaid, and that he has had no opportunity to procure such testimony since the coming in of the answer, it shall be lawful for the court to grant a continuance of the said motion until the next term; but no more than one continuance shall ever be granted at the instance of the party obtaining the injunction: the testimony to be heard on such motions (aside from the bill and answer) shall be by depositions in writing, taken as in other cases in chancery, except the affidavits which may have been filed with the bill or answer, which may be read on such motion as heretofore.

prove or dis-
prove bill or
answer.

in what case
continuance
may be grant-
ed.

No more than
one continu-
ance to be
granted.

Testimony to
be by deposi-
tions.

Approved, 9th January, 1822.

CHAP. XLVI.

AN ACT for the relief of James H. Peck, circuit attorney, and Henry Rollins.

WHEREAS, it appears to this General Assembly, that the auditor of this state did, on the 31st day of December, eighteen hundred and twenty one, issue certificates, in all amounting to the sum of sixty two dollars and fifty cents, in favor of James H. Peck, circuit attorney of the third judicial district, and that said certificates were lost in the Missouri river by accident: and whereas, it also appears that on the 31st day of December, in the year aforesaid, Clement B. Penrose, jr. did pay unto Henry Rollins fifteen dollars in auditor's warrants, drawn on the treasury of this state, in favor of said Penrose, which said warrants were dated on said 31st day of December, and were in amount and number as follows: one of ten dollars, numbered 102, one of five dollars, numbered 103, which were also lost as aforesaid: and whereas, it also appears, that on the day and year aforesaid, Abraham S. Platt did pay unto said Rollins ten dollars in auditor's certificates, drawn on the treasury as aforesaid, in favor of said Platt, which said warrants were in number and amount as follows: two of five dollars each, number 134.

and number 135, which were also lost by accident as aforesaid: for remedy whereof,

Auditor to issue duplicate certificate to Jas. H. Peck.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the auditor of this state be, and he is hereby required to issue in favor of James H. Peck, circuit attorney of the third judicial district, the sum of sixty two dollars and fifty cents duplicate certificates upon the treasury of this state, corresponding in number, amount and date with those issued by him in favor of said Peck, on the 31st day of December, eighteen hundred and twenty one.

In the name of C. B. Penrose, jr. and deliver to H. Rollins.

SEC. 2. *Be it further enacted,* That said auditor is hereby further required to issue duplicate certificates in the name of Clement B. Penrose, jr. one of ten dollars, numbered 102, and one other for five dollars, in the name of said Penrose, numbered 103, and deliver the same to the aforesaid Henry Rollins.

In the name of A. S. Platt and deliver to H. Rollins.

SEC. 3. *Be it further enacted,* That said auditor be and he is hereby further authorized to issue duplicate certificates on the treasury of this state, in the name of Abraham S. Platt, one for five dollars, numbered 134, one other for five dollars, numbered 135, and deliver the same to the said Henry Rollins.

Auditor to certify to treasurer.

SEC. 4. *Be it further enacted,* That when the auditor issues the duplicate certificates, as required in this act, he shall certify the amount, numbers, and dates of the said certificates to the treasurer, together with the facts of their being duplicates, who is hereby required to take notice of the same, and to avoid the payment of said original certificates, should they be found by any person. This act shall be in force from and after its passage.

Approved, 9th January, 1822.

CHAP. XLVII.

AN ACT supplementary to an act pointing out the manner that executions may be stayed, and regulating the sale of property under execution.

Plaintiff may endorse that loan office certificates may be taken at par.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That when any executions shall have or may have issued, it shall be lawful for the plaintiff or plaintiffs, his her or their attorneys to endorse on the back thereof, that loan office certificates of the state of Missouri at par, may be received by the sheriff or other officer charged with the execution in payment of the whole of the same; and if the defendant or defendants shall neglect to satisfy such execution accordingly, within thirty days after being notified, the sheriff or other of-

Execution not satisfied in 30

ficer shall proceed to levy on any real or personal estate belonging to the defendant or defendants, and sell the same for said loan office certificates; or as much thereof as will satisfy such execution, under the same restrictions and limitations as to what property shall be first sold, as provided for in the act to which this act is a supplement, and make return to the succeeding term of the court or justice of the peace from whom such execution issued, any thing in the act entitled "An act pointing out the manner that executions may be stayed and regulating the sale of property under execution," and also an act entitled "An act for the benefit of debtors and creditors" to the contrary notwithstanding. This act shall take effect and be in force from and after the first day of April next.

Approved, 11th January, 1822,

CHAP. XLVIII.

AN ACT prescribing the emblems and devices of the Great Seal of the State of Missouri.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That the device for an armorial achievement for the state of Missouri, shall be as follows, to wit: *Arms*, parted per pale, on the dexter side; *gules*, the white or grisly bear of Missouri, *passant guardant*, proper on a chief engrailed; *azure*, a crescent *argent*, on the senister side *argent*, the arms of the United States, the whole within a band inscribed with the words "United we stand, divided we fall." *For the crest* over a helmet full faced, grated with six bars, or a cloud proper, from which ascends a star *argent*, and above it a constellation of twenty-three smaller stars *argent* on an *azure* field, surrounded by a cloud proper. *Supporters* on each side, a white or grisly bear of Missouri, rampant, guardant proper, standing on a scroll inscribed with the motto, "*Salus populi Suprema lex esto*," and under the scroll the numerical letters MDCCCXX. And the great seal of this state shall be so engraved as to present by its impression, the device of the armorial achievement aforesaid, surrounded by a scroll inscribed with the words "The great seal of the state of Missouri" in roman capitals, which seal shall be in a circular form and not more than two and a half inches in diameter.

SEC. 2. *Be it further enacted*, That the Secretary of State shall procure the said seal, engraved as prescribed by this act, and he is hereby authorized to draw on the

Auditor of public accounts for all expenses accruing in procuring such seal, to be paid by the Treasurer of this state out of any monies in the treasury. This act shall be in force from and after the passage thereof.

Approved, 11th January, 1822.

CHAP. XLIX.

AN ACT to regulate proceedings at Law.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That from and after the passage of this act, all writs and process shall run, and all prosecutions shall be conducted in the name of the "State of Missouri;" all writs and process shall be tested by the clerk of the court from which they shall be issued, and all writs shall be sealed with the judicial seal of such court and made returnable to the next term after the date thereof: *Provided,* That in every suit brought within fifteen days immediately preceding the term of the court in which it is instituted, the original writ shall be made returnable to the second term of said court next ensuing the date of the writ.

Writs and process how to be issued.

Fee for issuing writ to be paid at the time of delivery.

SEC. 2. *Be it further enacted,* That in all cases where any person shall apply for an original writ, the legal fee for issuing the same, and all taxes accruing thereon shall be paid to the clerk at the time the writ is issued or delivered.

Security for costs in what cases to be given.

SEC. 3. *Be it further enacted,* That in all actions on office bonds for the use of any persons, actions on the bonds of executors, administrators or guardians, *quidam* actions, and in all cases where the plaintiff shall not be a resident of this state, the plaintiff or person for whose use the action is to be commenced, shall, before he institutes such suit, file or cause to be filed with the clerk of the court in which the action is to be commenced, the bond of some person being a resident of the state, conditioned that he will pay or cause to be paid all costs which may accrue in such action, and if any such action shall be commenced without filing such bond, the court on motion shall dismiss the same, and the attorney of the plaintiff shall pay all costs accruing thereon, and if at any time after the commencement of any suit, by a resident of this state, he shall become non-resident, or the court shall be satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court with respect to their legal demands, it shall be the duty of the court on motion of the defen-

defendant or any officer of the court, to rule the plaintiff on or before a day to be in such rule named, to file a bond of some responsible person a resident of this state, conditioned that he will pay or cause to be paid all costs which shall have accrued and which may accrue in such suit, and in case of neglect or refusal to comply with such rule, the court shall on motion dismiss such suit, and it shall be lawful for the clerks of the courts respectively, to make out fee bills of all costs for which any security or attorney shall be bound as aforesaid and deliver the same to the sheriff who shall collect and pay over the same and in the same manner as is, or shall be provided by law for the collection of fees or fee bills.

SEC. 4. *Be it further enacted,* That if any court shall be satisfied that the plaintiff is a poor person, and unable to prosecute his or her suit and pay the expenses thereof, they may in their discretion declare such person a pauper and permit him or her to commence and prosecute his or her action as such, and thereupon such person shall have all necessary writs, process and proceedings as in other cases, without fees, tax or charge, and the court may assign to such person counsel learned in the laws, who, as well as all officers of the court shall do their duties in such suit without any fees, charge or reward: *Provided,* That if judgment be rendered in favor of such person, the fees, taxes and charges shall be taxed and collected as in other cases.

SEC. 5. *Be it further enacted,* That infants under the age of twenty-one years may commence and prosecute their actions by any guardian or next friend, previously appointed according to law, or when none has been appointed, by his or her next friend, without any other formality than such next friend acknowledging his or her willingness to prosecute the action as such, which acknowledgment shall be in writing and filed with the declaration, petition or statement of the plaintiff, and such next friend and guardian shall be responsible for all costs accruing in such suit.

SEC. 6. *Be it further enacted,* That the original process in all actions shall be a writ of summons (except as hereinafter provided) directed to the sheriff of the proper county, commanding him to summon the defendant to answer the complaints of the plaintiff, but if any plaintiff shall satisfy any judge or clerk of the proper court by affidavit on his or her oath or affirmation, or of some credible person or persons for him, that he or she hath a real subsisting and unsatisfied cause of action against the de-

Paupers may sue without fee, tax or charge.

Court to assign counsel.

Proviso.

Infants may sue by guardian or next friend.

Original process to be a summons.

In what cases
a *capias* may
issue.

defendant to be specified in such affidavit and the amount of debt or damages due him, if the action be founded on contract and that the plaintiff will be in danger of losing his debt or damages unless the defendant be held to bail, it shall be lawful for the judge or clerk to make an order that a writ of *capias ad respondendum* be issued, and the defendant held to bail in a sum to be in such order specified, and such writ shall be issued accordingly, and the clerk shall endorse thereon the amount in which the sheriff is required to take bail.

Court may re-
duce bail.

SEC. 7. *Be it further enacted*, That it shall be lawful for any court out of which a *capias ad respondendum* issues, or any judge thereof in vacation, on application of the defendant or his agent on good cause shewn, to reduce the sum for which bail is demanded, due notice of such application having previously been given to the plaintiff or his attorney, and if at any time during the pendency of the action, the court shall be satisfied that bail ought not to have been required, either on account of the insufficiency of the plaintiff's affidavit or for other good cause shown, the defendant's appearance shall be accepted, the bail bond (if any taken) cancelled and the cause proceed in all things as if the original writ was a summons.

Defendant not
to be held to
bail except in
his county.

SEC. 8. *Be it further enacted*, That no person being an inhabitant of this state shall be arrested or held to bail in any civil action except it be in the county in which he resides, nor shall any person be summoned for trial in any such action, in any county other than that of which he is an inhabitant, unless he be found in the county in which the plaintiff resides at the time of serving such process.

Several debts
residing in dif-
ferent coun-
ties.

Provided, That in all cases where there are several defendants residing in different counties, the plaintiff may institute suit against all or as many of them as he may think proper, and the clerk of the court in which suit is instituted, shall make out a separate summons or *capias* (as the case may be) against such of the defendants as reside in a different county, directed to the sheriff of the county where such defendants reside, and endorse thereon, that it is a counterpart of the writ issued where such suit is commenced.

Party apply-
ing for writ to
file a declara-
tion.

SEC. 9. *Be it further enacted*, That it shall be the duty of every person applying for an original writ to file by himself his agent, or attorney with the clerk of the proper court, a declaration, petition or statement containing the true nature of his or her demand or complaint, and thereupon the clerk shall issue a summons or *capias ad respondendum* according to the provisions of

this act, and all original writs shall be served at least fifteen days before the return day thereof.

Writs to be served 15 days before return day.

SEC. 10. *Be it further enacted*, That the service of a summons shall be by reading the writ and declaration, petition or statement to the defendant, or by delivering him a copy of such writ and declaration, petition or statement: *Provided*, That if any defendant shall refuse to receive such copies or hear them read, the sheriff shall state that fact in his return and it shall be a sufficient service.

In what manner to be served.

SEC. 11. *Be it further enacted*, That it shall be the duty of the sheriff or other officer to whom a writ of *capias ad respondendum* may be directed, to take the defendants body and commit him to the common jail of the county, unless the defendant shall enter into recognizance to the plaintiff with sufficient securities in the sum endorsed on the writ, conditioned that the defendant shall be and appear at the term of the court to which the writ is returnable, and that if judgment be given at that or any subsequent term against him, that he will pay the amount thereof and costs, or surrender himself in execution or that the said securities will do it for him, which recognizance shall be returned with the writ, and if the sheriff shall fail to take and return such recognizance, or any such recognizance returned shall be adjudged insufficient by the court, and the defendant shall fail to perfect his bail if ruled thereto, the sheriff shall be made co-defendant, and may defend the suit, shall be subject to the same judgment and recovery as the defendant would have been subjected to: *Provided*, That all questions concerning the sufficiency of bail shall be determined during the return term.

Duty of shiff. on capias.

Defendant may give bail.

Recognizance to be returned with writ.

Security insufficient, sheriff to be made co-defendant.

SEC. 12. *Be it further enacted*, That no attorney or counsellor at law, solicitors, sheriffs or his deputies, coroners or other persons concerned in the execution of process, shall be bail in any case without leave of the court.

Who shall not become bail.

SEC. 13. *Be it further enacted*, That if the sufficiency of bail be not excepted to during the term to which the writ is returnable the same shall be considered as accepted, and if the recognizance be forfeited, the plaintiff may cause a *scire facias* to be issued thereon, and at the return thereof if executed, or on the return of second not executed, judgment shall be rendered against the bail, unless good cause to the contrary be shewn.

Bail to be excepted to at return term.

Recognizance forfeited, sc. fa. may issue.

SEC. 14. *Be it further enacted*, That the persons who are bound as bail as aforesaid, may surrender the principal at any time before the return of the first *scire facias*.

Bail may surrender principal.

executed, or of the second returned not executed, which surrender may be made to the court in which the suit against the principal is pending or by obtaining a copy of the recognizance out of the clerks office, and delivering the principal to the sheriff of the county in which the original was served, who shall receive him and give to the person surrendering him, a receipt stating the surrender, which shall be filed in the office of the clerk of the court in which the action is pending, and the bail shall give immediate notice of such surrender to the plaintiff or his attorney, and shall pay the costs of the *scire facias* and proceedings thereon, if any, and thereupon the bail shall be discharged; and the principal committed to the common jail of the county, there to remain as other persons imprisoned for debt, until discharged by the due course of law: *Provided*, That if such surrender be before judgment, the sheriff may take new bail, in the same manner and with like effect as in the first instance and if the surrender be after judgment, and the plaintiff shall not charge him in execution within ten days after notice thereof, he shall be discharged out of custody, but the plaintiff may nevertheless have execution against his property.

Security may obtain judgment or principal by motion.

Notice of such motion to be given.

Remedy of sheriff when made co-defendant.

SEC. 15. *Be it further enacted*, That if judgment be rendered against any security in any recognizance of bail entered into by virtue of this act, and the amount thereof or any part thereof paid by him, his executors or administrators, it shall be lawful for him, his executors or administrators to obtain judgment by motion against their principal his executors or administrators, for the full amount so paid, with interest, at the rate of ten per centum per annum, and costs, in any court having competent jurisdiction: *Provided*, That no such judgment shall be rendered upon motion, unless the party against whom it is moved for, shall be notified of the intended motion at least thirty days previous thereto if resident of the state, and if not, then a notice of such motion shall be published for six weeks successively in any newspaper printed in this state.

SEC. 16. *Be it further enacted*, That when the sheriff shall be made co-defendant, and judgment shall be rendered against him, his executors or administrators, and he or they pay the amount of the judgment or any part thereof, he or they shall have the same remedy against the principal, as the bail in like cases; and in case such judgment be rendered by reason of the insufficiency of bail, he may proceed against the bail on the recognizance in the name of the plaintiff for his use.

SEC. 17. *Be it further enacted*, That in all courts of Parties may record in this state, the parties may plead and manage plead and their own causes in proper person, by authorized agent manage their or by attornies or counsellors at law permitted to practice therein, and where the defendant is in custody, he may make his defence, and the plaintiff proceed as in other cases.

SEC. 18. *Be it further enacted*, That in all cases where Proceedings where there are several defendants, there are several defendants, of whom shall be summoned or taken, and others not, the plaintiff may proceed against those summoned or taken, without regard to the others, or may continue his cause and take out alias writs returnable to the next term, at which time he shall proceed against those summoned or taken.

SEC. 19. *Be it further enacted*, That every defendant Pleadings when to be made, duly served with process, shall plead to the merits on or before the sixth day of the term to which the original writ is returnable, if the term shall so long continue, and if not, then before the end of the term.

SEC. 20. *Be it further enacted*, That replications and Replications & subsequent pleading when to be filed, subsequent pleading may be filed during the return term or in vacation, but replications shall be filed within thirty days after the commencement of the return term and subsequent pleadings at such times and on such terms as the courts respectively shall by rule appoint, and if filed in vacation, a copy thereof shall be served on the other party his agent or attorney, within fifteen days after filing the same, but similiters and joinders in demurrer may be filed at any time without notice.

SEC. 21. *Be it further enacted*, That the defendant in Def. may all actions may plead as many several matters; whether plead as many, of law or fact as he shall think proper, but no plea in abatement shall be received, unless the party offering the pleas as he thinks proper, same shall verify it by oath or affirmation, and all pleas Pleas in abatement shall be determined at the term in which to be sworn to, they are filed unless good cause for a continuance be shewn.

SEC. 22. *Be it further enacted*, That all pleadings shall Pleadings to be signed, be signed by the party or his attornies and the clerk shall endorse thereon the day on which the same are filed, and if filed in open court shall be entered on the minutes.

SEC. 23. *Be it further enacted*, That all pleadings containing sufficient matter to put the merits of the cause at Pleadings admitted without respect to form and may be amended at any time before a jury is sworn, upon such terms as the circuit courts respectively any time, shall prescribe.

Writs, &c. not to be arrested for want of form.

Except in cases of demurrer.

Replication not filed, judgment of nonpross may be signed.

Def't. failing to plead, pl'tff. may have judgment by default, if demand is reduced to writing

And if not, court shall award inquiry of damages.

Writing with scrawl affixed, deemed a sealed instrument.

SEC. 24. *Be it further enacted*, That no writ, return, process, judgment or other proceedings in any cause shall be abated, arrested, quashed or reversed, for any defect or want of form, but the courts respectively shall proceed to give judgment according to the right of the cause and matter in law, as it shall appear to them without regarding imperfections, defects or want of form in such writ, declaration or other pleading, return, process, judgment or cause of proceeding whatsoever, except those only in case of demurrer, which the party demurring shall specially set down as the cause thereof, and the court respectively may from time to time amend all imperfections, defects and want of form, other than those only which the party demurring shall express as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleading, upon such condition as the court respectively shall prescribe.

SEC. 25. *Be it further enacted*, That if at any time a plaintiff shall fail to file his replication or other pleading within the time prescribed by this act or rule of court, and to serve the other party his agent or attorney with a copy, where the same is required, judgment of nonpross for such omission may be signed, which shall be final; but such judgment may be set aside for good cause shown during the term at which it is entered.

SEC. 26. *Be it further enacted*, That if any defendant shall fail to file his plea or other pleading within the time prescribed by this act or rule of court, the plaintiff may have judgment by default, and when there are several defendants, some of whom appear and plead and others make default, the plaintiff may have judgment by default against the defaulters, and proceed against the others, and in cases of judgment by default where the demand is liquidated and reduced to writing, the court shall render judgment for the amount due, which shall be final, in other cases an enquiry of damages shall be awarded by the court, which shall be made by a jury of the next succeeding term, unless otherwise ordered: *Provided*, That the court may at any time before enquiry had, set aside a judgment by default upon such terms as they may think proper.

SEC. 27. *Be it further enacted*, That all instruments of writing to which the person executing it, shall affix a scrawl or other device by way of seal, shall be taken and considered as sealed and so stated in pleading; and when any declaration or pleading shall be founded on any instrument of writing purporting to be executed by the other party, whether under seal or not, proof thereof shall

he made, oyer thereof be given if required, and the same shall be received in evidence, unless the party charged to have executed it, shall deny the execution thereof by plea supported by his affidavit accompanying the plea and filed therewith.

Proffert to be made & oyer to be given.

Plea of non est factum.

SEC. 28. *Be it further enacted*, That all demurrers shall be disposed of at the term in which they are filed, and if filed in vacation, then at the next term after filing the same, unless otherwise ordered by the court, and when there are several issues in law and in fact, the issue of law shall be first tried and determined.

Demurrers to be disposed of at first term after filing.

Issue of law to be first tried.

SEC. 29. *Be it further enacted*, That the clerks of the several courts of law, shall before the commencement of each term of their respective courts, enter in a particular docket all causes in which an issue is to be tried or inquiry of damages to be made, a special verdict, case agreed, demurrer or other matters of law to be argued, in the same order as they stand in the course of proceedings, setting as nearly as may be, a due proportion of causes to each day, and they shall put up in some conspicuous place in their several offices at least sixty days before the commencement of each term, a list of causes to be tried and decided as aforesaid, specifying the day on which each cause is to be tried, and keep such list affixed as aforesaid till the end of the term, for the inspection of parties, and their attorneys, and shall from time to time issue subpoenas for witnesses returnable on the day for which the cause in which they are required to attend is set for trial, and every clerk who shall neglect or refuse to make out such docket, set up or keep set up in his office, such list of causes as herein required, or shall neglect or refuse to issue subpoenas as aforesaid, he shall be fined at the discretion of the court in a sum not exceeding one hundred dollars.

Clerks. to make out list of causes, to be set up in their offices, sixty days before court.

To issue subpoenas.

Penalty for neglect or refusal.

SEC. 30. *Be it further enacted*, That when any person shall have cause of action against several defendants upon or arising out of any contract, matter or thing, for which such person shall be entitled by the laws of the land, to but one satisfaction, it shall be lawful for such plaintiff to commence his action against all or as many of the defendants jointly as he shall think proper, and the courts respectively shall cause such proceedings to be had therein as shall advance the administration of justice therein, to avoid unnecessary costs or delay.

Party having cause of action vs. several defendants. may sue all, or as many as he thinks proper.

SEC. 31. *Be it further enacted*, That wherever there shall be several actions or processes against persons who might legally be joined in one action or process, touching any demand or matter in dispute before any court in

Number of actions unnecessarily multiplied courts to direct in

What manner
costs to be
paid:

this state, or where several causes of a like nature or relative to the same question shall be depending between the same parties, the plaintiff, if he prevail, shall not thereon recover the costs of more than one action or process, and shall be adjudged to pay the costs in all others, unless special cause for several actions be satisfactorily shewn to the court, and it shall moreover be lawful for the court to make such orders and rules concerning proceeding in such cases as may be conformable to the principles and usages belonging to courts for avoiding unnecessary costs or delay in the administration of justice, and accordingly such causes may be consolidated as to the court shall appear reasonable, and if any attorney, counsellor or other person authorized to manage and conduct any cause, shall multiply the proceedings in any cause so as to increase costs unreasonably and vexatiously, such person may be compelled by order of court to satisfy any excess of costs so incurred:

Court failing
to attend or
adjournment
be for business
is completed,
not to work a
discontinuance

SEC. 32. *Be it further enacted,* That no suit, process or pleading, civil or criminal shall be deemed discontinued or abated by reason of the failure of any regular term or session, nor by reason of the adjournment of any court, before the business pending therein is disposed of, but the same shall be continued and proceeded upon in the same manner as if a continuance thereof had been regularly entered, or such failure of the term or adjournment had not happened.

In what cases
the court may
award change
of venue.

SEC. 33. *Be it further enacted,* That when either party shall fear that he will not receive a fair trial in the court in which the action is pending, on account that the judge is interested or prejudiced, or that the sheriff or coroner (where the sheriff is a party) is interested or prejudiced, or that the adverse party has an undue influence over the minds of the inhabitants of the county wherein the action is pending, or that the inhabitants of such county are prejudiced against the applicant so that he cannot expect a fair trial, such party may apply to the court in term time, by petition setting forth the cause of the application verified by affidavit for a change of venue, previous notice of such application being given to the opposite party or his attorney, and the court shall award a change of venue to some county where such cause does not exist, and the clerk of the court shall thereupon certify the records and proceedings in such cause and transmit the same, together with all papers filed in the cause to the proper court, and the clerk of the court to which such cause is certified shall file the same and docket the cause as in other cases, and the cause de-

Records and
proceedings
to be certified.

terminated by such court in all things as if it had originated therein, and the expences attending a change of venue shall be paid by the petitioner before the records, papers and documents shall be transmitted.

Costs to be first paid.

Sec. 34. *Be it further enacted,* That all causes shall be continued at the term to which the writ is made returnable until the next term, unless the parties agree to a trial thereof at the first term, or the cause be otherwise disposed of according to law or the practice of the courts; after the first term no continuance shall be granted to either party unless for good cause shewn, and every motion for a continuance shall be accompanied by an affidavit of the party or his agent, setting forth the facts upon which the application is made, and the party obtaining a continuance shall pay the costs thereof, unless otherwise ordered by the court.

Causes to be continued at return term.

Subsequent continuances how granted.

Sec. 35. *Be it further enacted,* That if either party to an action pending in any of the courts of this state, shall die before final judgment, the executors or administrators of such party, if the action doth by law survive, shall have power to prosecute or defend such suit or action to final judgment, and if any executor or administrator, being duly served with a *scire facias* twenty days before the return thereof, shall neglect or refuse to become a party to the suit, the court may render a judgment against the estate of the deceased, in the same manner as if the executor or administrator were a party; and the executor or administrator becoming a party to a suit as aforesaid, shall be entitled to a continuance of such cause till the next term of the court, and the cause shall be conducted in all respects as if the executor or administrator had originally been a party; and where there are two or more plaintiffs or defendants, and one or more them shall die, the writ or action shall not be thereby abated, but such death being suggested, the action shall proceed at the suits of the surviving plaintiff, or against the surviving defendant.

Either party dying before judgment, ex'r. or adm'r. may prosecute or defend.

Sec. 36. *Be it further enacted,* That no action now pending, or hereafter to be brought, by or against a feme sole, shall abate by reason of her intermarriage, but the husband may be made a party thereto, on motion of either party, or his or her attorney, and the action shall proceed as if originally commenced by or against such husband and wife.

Action by or against feme sole not to abate by her intermarriage.

Sec. 37. *Be it further enacted,* That when the testimony of any person, residing or being within this state, shall be necessary in any civil cause depending in any courts of this state, it shall be lawful for the party wishing to use

Deposition of witnesses may be taken.

Notice to ad-
verse party.

May be read
in evidence, if
witness is an-
cient sick or
infirm.

Depositions of
witness resid-
ing out of the
state, how ta-
ken.

Subpoenas for
witnesses how
and by whom
issued.

such testimony, to cause the deposition of such person to be taken in such cause, first causing a notice in writing of the time and place of taking such deposition to be served on the adverse party, if he reside within the state, or his attorney of record where he is a non resident, or if neither the party nor his attorney reside within the state; causing such notice to be put up in the office of the clerk of the court in which the action is pending, which notice shall be served or put up at least three days before the taking of such deposition, and one day additional (Sundays inclusive) for every twenty five miles travel; and depositions taken, sworn to and subscribed before any judge or justice of the peace, in pursuance of such notice, may be read in evidence at the trial, if it shall appear to the satisfaction of the court that the deponent is ancient, sick or infirm, insomuch that he cannot safely appear in person, or resides more than sixty miles from the place of trial, or out of this state, or has gone to a greater distance from the place of trial than sixty miles, without collusion or consent of the party requiring his testimony: and where the person whose testimony shall be necessary as aforesaid, shall reside out of this state, the deposition of such person may be taken upon a rule of the court wherein the action is pending, to be entered in term time or in vacation, and a dedimus issue in pursuance thereof to any judge or justice of the peace, chief magistrate of any city or county of any state; territory, kingdom or empire, notice of the time and place of taking such deposition being given as aforesaid, and the deposition being taken pursuant to such notice, and sworn to and subscribed by the deponent, before such judge, justice or chief magistrate, may be read in evidence at the trial of such cause, the official character of the officer taking the same being attested by the seal of any court, state, territory, kingdom or empire where such officer shall reside.

SEC. 38. *Be it further enacted,* That in all cases where witnesses are required to attend the trial of any cause in any court of record, a summons shall be issued by the clerk of the court wherein the action is pending, or by the commissioners or referees, or other person acting under the authority of such court, to take the depositions or testimony of such witness required to attend before them, at the request of either party interested, expressing the day and place where they are to appear, and such subpoenas may be served in any county in this state, and such summons shall contain the names of all witnesses for whom a summons is required by the same party at the same time who reside in one county.

Sec. 39. *Be it further enacted,* That any person summoned as a witness in any cause depending in any court of record, or before commissioners, referees, or other persons appointed under the authority of the court to take his deposition or testimony, and failing to attend, not having a reasonable excuse, may be compelled by attachment to appear, which may be served in any county in the state; and any person so summoned, and attending, who shall refuse to give evidence on oath or affirmation, as the case may be, shall be committed to prison by the court, or other person authorized to take his deposition or testimony, there to remain without bail or mainprize until he give such evidence; and the court shall have power to impose a fine not exceeding fifty dollars on every person summoned as a witness who shall not appear and testify, which fine may be remitted, on good cause shewn, at the term to which he is summoned, or the next term thereafter; and where the party causing such witness to be summoned shall have paid or tendered to such witness his legal fees for travel, and one days attendance, at the time of summoning, such delinquent witness shall be moreover liable to the action of the party for all damages sustained by his non-attendance, unless he shew sufficient cause to justify such absence.

Witness failing to attend attachment may issue.

Refusal to give evidence punishable by fine and imprisonment.

Liable for damages to party agrieved

Sec. 40. *Be it further enacted,* That all witnesses shall be privileged from arrest in all cases, except treason, felony or breach of the peace, during their attendance on any court or other place where their attendance is required by subpoena, and in going to and returning from thence, allowing one day for every twenty miles from their abode; and every person who shall cause a witness to be arrested, knowing him to be attending as such upon a subpoena, his suit shall be abated, and he moreover fined at the discretion of the court from which the subpoena issued, in any sum not exceeding twenty dollars, upon ten days previous notice thereof.

Privileged from arrest.

Arrested during attendance, suit to abate.

Sec. 41. *Be it further enacted,* That whenever in the progress of any cause a notice shall be required to be served, it may be served by any person being competent as a witness in the cause, and the affidavit of such person, sworn to before any competent person, shall be received as evidence of the facts therein stated relating to the service, in the same manner as if stated in open court, or such notice may be served by the sheriff or other officer of the court authorized to serve process, and shall be evidence of the facts therein stated, and the services of such notices shall be in the same manner as in case of a writ of summons.

Notices how and by whom served.

Trial by jury
if either party
require it, but
if not court
may deter-
mine the laws
and the facts.

SEC. 42. *Be it further enacted,* That if any party to a suit now depending or hereafter to be commenced in any court of record of this state, shall at any time before the trial of such cause, by himself or counsel require a trial by jury, a jury shall be empannelled for the trial thereof, but if neither party require a jury, the law and the facts may be determined by the court or the court may refer such cause to three or more indifferent and competent persons, whose report if approved by the court shall have the same effect as a verdict by a jury.

Witness not to
be a juror.

SEC. 43. *Be it further enacted,* That no witness shall be sworn as a juror in any cause civil or criminal in any court, and it shall be good cause of challenge to any juror, that he is to be a witness in the cause to be tried, which cause of challenge shall be determined either by examination of the person on the *voir dire* or otherwise, as in other cases of challenge of jurors, or by his being summoned as a witness, and it shall moreover be a good cause of challenge to a juror, that he has either formed or delivered an opinion in the cause, or concerning the matter in controversy, and if any juror know any thing relative to the point in issue, he shall disclose the same in open court.

Juror having
formed or de-
livered an o-
pinion cause
of challenge.

Either party
may be requir-
ed to produce
books or pa-
pers contain-
ing evidence
pertinent to
issue.

SEC. 44. *Be it further enacted,* That the several courts of record shall have power in any action depending before them, on motion and upon good and sufficient cause shewn by affidavit or affirmation, and due notice thereof being given, to require the parties or either of them, to produce books or writings in their possession or power, which contain evidence pertinent to the issue, and if either party shall fail to comply with such order, and to produce such books or writings, or to satisfy said court why the same is not in the parties power so to do, it shall be lawful for the said courts, if the party so refusing shall be plaintiff, to give judgment for the defendant as in cases of non suit, and if defendant, to give judgment against him or her, so far as relates to such part of the plaintiffs demand or the defendants defence, to which the books and papers required to be produced are alleged to apply.

Judgment to
be given ag't
party refusing.

Either party
may have a
discovery from
the other.

SEC. 45. *Be it further enacted,* That in all trials at law, either party may have from the other, a discovery of matter pertinent to the issue, in cases and under circumstances where such party might have a discovery by the aid of a court of chancery upon filing a petition stating the facts upon which he founds his claims to a discovery and the matters whereof he claims a discovery verified by the affidavit of the petitioner or some competent

person for him, with interrogatories to such petition annexed, touching the facts prayed to be discovered, and the other shall answer or demur thereto in the same manner and for the like cause as in case of a bill for discovery in chancery; and the courts of law shall have the like power to enforce discovery and to proceed in all matters in relation thereto as by the ordinary rules of proceedings in chancery in like cases, and the answer of the respondent may be used as evidence in such cause, in like manner as if made to a bill for discovery in chancery in aid of a suit at law.

Manner of obtaining it.

Power of the courts of law.

Sec. 46. *Be it further enacted*, That the several courts may from time to time appoint interpreters and translators to interpret and translate the testimony of witnesses, or other evidence, who shall hold their office during the pleasure of the court; each interpreter or translator shall take an oath to interpret and translate well and truly, to the best of his abilities, the testimony of witnesses, or other evidence, which he may be called on to interpret or translate; and shall receive such compensation for his services in each cause as the court shall deem just and reasonable, to be allowed, taxed and collected as other costs.

Courts may appoint interpreters and translators.

To be sworn.

Compensation

Sec. 47. *Be it further enacted*, That if, during the progress of any trial in any civil cause, either party allege an exception to the opinion of the court, and he that allegeth the exception doth write the same, and prays the judge or judges to allow it, and sign and seal the same for a testimony; the judge, or a majority present, shall do so, and if they shall refuse so to do, and the same is signed by at least three bystanders, respectable inhabitants of the state, the court shall permit such bill to be filed and become part of the record; if they refuse, the supreme court may, when such cause is brought before them by appeal or writ of error, upon proper affidavit of such refusal, admit such bill of exceptions as a part of the record: and when the court shall certify, as a cause of their refusal to sign such bill, that its statement is not true, and bystanders shall sign the bill, certifying its truth, affidavits not exceeding five may be taken by either party as to its truth during the term, or if the cause be tried on the last day thereof, then within five days thereafter, to be deposited with the clerk and certified with the record.

Exception tendered to an opinion of the court, judge to sign it.

Court refusing by standers may sign it.

Sec. 48. *Be it further enacted*, That no plaintiff shall be permitted to suffer a non-suit after the jury have retired from the bar to make up their verdict; and if either party in any civil cause die after verdict, and before judg-

Non suit not to be permitted after jury retire.

Party dying
after verdict
and before
judgment.

Faulty counts
in declaration
how disposed
of.

New trials
when & how
granted.

Motions in ar-
rest of judgment
when & how
made

Judgt. not to
be arrested for
informality.

Judgt. arrest-
ed, court may
order new
pleadings to
commence.

Appeals from
circuit court.

Appellant to
give bond and
security. un-
less he be ex-
or admr.

ment, judgment shall be rendered as if both parties were living. Where there are several counts in a declaration; one or more of which are faulty, and entire damages are given, the verdict shall be good, but the defendant may apply to the court to strike out such faulty count or counts or to instruct the jury to disregard them.

SEC. 49. *Be it further enacted,* That all motions for new trials shall be made within four days after the verdict rendered, or during the term, if the court should not sit so long, upon reasons in writing filed: not more than one new trial shall be granted to either party, unless it shall appear to the court that the jury have erred upon a question of a law or been guilty of misconduct; and on granting new trials the court shall determine whether the same shall be at the cost of the party applying, or shall abide the event of the suit:

SEC. 50. *Be it further enacted,* That all motions in arrest of judgment shall be made, and reasons therefor in writing filed, within four days after the verdict rendered, and within the term; and no judgment shall be stayed, reversed or arrested for any defect or fault in the writ original or judicial, or for variation in the writ from the declaration, or other proceeding, or any mispleading, insufficient pleading, discontinuance, misjoining the issue, want of warrant of attorney, or other informality in entering up the judgment by the clerk; and where a judgment is arrested the plaintiff shall not be obliged to commence a new suit, if the first writ and declaration be sufficient, but the court may order new pleadings to commence where the error causing the arrest began, and the party committing the error shall pay all costs accruing thereby.

SEC. 51. *Be it further enacted,* That if any person shall deem him or herself aggrieved by any final decision or judgment of any circuit court, in any cause originating in the said court, and such person, or his agent, shall, during the term in which such judgment or decision is given, make an appeal to the supreme court, accompanied by an affidavit of such party or agent, stating, that the application is not made for the purpose of vexation or delay, but because the affiant verily believes the applicant aggrieved by the decision or judgment on which the appeal is prayed, such appeal shall be allowed, but when the appellant is not executor or administrator, and suing or sued as such, such appeal shall be no stay of proceeding, unless a recognizance be entered into by the defendant, or some responsible person for him, with at least two sufficient securities to be approved by the court, in a sum sufficient to secure the debt and damages which may have

been adjudged against the appellant, and all costs which shall have accrued or may accrue in such action, conditioned that the appellant shall prosecute his appeal with effect, pay and satisfy the condemnation money, and all costs, or otherwise abide the judgment of the supreme court in such appeal, and such recognizance being given, or the appellant being an executor or administrator as aforesaid, the said circuit court shall not proceed any further in such cause.

SEC. 52. *Be it further enacted,* That it shall be the duty of the appellant, in all cases of appeal from the decision or judgment of the circuit court, to cause a complete transcript of the record and proceedings in such case to be filed with the clerk of the supreme court of the proper district, ten days at least before the first term of such supreme court to be holden after such appeal is taken, or if such term shall commence within thirty days after the rendition of the judgment or decision appealed from, then thirty days at least before the next succeeding term of the supreme court, and if the appellant shall neglect so to do, and the appellee shall produce a certificate from the clerk of the circuit court, stating that an appeal has been allowed, together with a transcript of the records and proceedings in such case, the supreme court, unless good cause for such neglect be shewn, shall order that the judgment be affirmed.

SEC. 53. *Be it further enacted,* That writs of error on the final decision or judgment of the circuit court, shall issue, on demand, as a matter of right, but no writ of error issued out of the supreme court, shall be a supersedeas, unless by special order of the supreme court, or some judge thereof in vacation, after inspecting a copy of the record; and the plaintiff in error, (if he be not an executor or administrator, suing or sued as such) or some responsible person for him, entering into a recognizance in a sum sufficient to secure the debt or damages which may have accrued against such plaintiff in error, and all costs which have accrued or may accrue in such action, with one or more sufficient securities, to the defendant in error, to be approved of by such court or judge, conditioned that the said plaintiff in error shall prosecute his writ of error with effect, pay and satisfy the condemnation money and all costs, or otherwise abide the judgment of the supreme court in such case, and when such order is made and the plaintiff in error be an executor or administrator, suing or sued as such, or the recognizance entered into as aforesaid, the court or judge shall cause the clerk of the court out of which the writ of error is prayed to be

Appellant to file with clerk of supreme court a transcript of the record ten days before the next term.

Mode of proceeding in case of neglect

Writs of error to issue on demand.

In what cases to be made a supersedeas.

Clerk to endorse

Execution to
be stayed.

Proviso.

Ptff. in error
to serve no-
tice on deit.
or his attorney
of record.

Errors and
joinders in er-
ror when to
be filed.

Each party
to furnish each
judge with
state of the
case.

Exceptions.

S. C. divided
in opinion
judgment to
be affirmed

Duty of S. C.
in cases of ap-
peal or writs
of error.

issued, to endorse on such writ of error, that it shall be a supersedeas and obeyed as such accordingly; and if execution shall have been issued by the circuit court before such order be obtained, and the plaintiff in error, or some person for him, shall exhibit such writ of error to the officer in whose hands the execution shall be, such officer shall proceed no further thereon, but shall return the same with the reason for not proceeding: *Provided*, That no judge of the supreme court shall have power in vacation to grant a supersedeas as aforesaid, unless the same be applied for within ninety days after the rendition of the judgment.

SEC. 54. *Be it further enacted*, That every plaintiff in error suing out a writ of error, shall cause a notice thereof, in writing, to be served on the adverse party, or his attorney of record, ten days at least before the return day of the writ of error, and in default thereof the judgment of the circuit court shall be affirmed, unless good cause for such default be shewn.

SEC. 55. *Be it further enacted*, That in all cases of appeal, the appellant, and in writs of error, the plaintiff in error, shall assign errors on or before the first day of the first term of the supreme court next after the appeal taken or writ of error sued out; and in default thereof the appeal or writ of error may be dismissed, or the judgment affirmed, unless good cause be shewn for such default, and joinders in error shall be filed within four days after the errors are assigned.

SEC. 56. *Be it further enacted*, That on an appeal or writ of error each party shall make out a clear and concise state of the case, with the points intended to be insisted on by him, signed by his counsel, and deliver a copy thereof to each of the judges of the supreme court in sufficient time before the hearing, but if neglected, the court may, in their discretion, nevertheless hear and determine the same.

SEC. 57. *Be it further enacted*, That on an appeal or writ of error no exception shall be taken to the proceedings at law, but such as have been expressly decided in the circuit court; and whenever the supreme court shall be divided in opinion on the hearing an appeal or writ of error, the decision, decree, or judgment of the circuit court shall be affirmed.

SEC. 58. *Be it further enacted*, That in all cases of appeal or writs of error, duly taken and entered in the supreme court, it shall be the duty of the court to examine the record, and to award a new trial, reverse or affirm the judgment or decision of the circuit court, or give such

judgment as the said court ought to have given, as to them shall seem according to law, and when the facts in a special verdict may be insufficiently found, the supreme court may remand the cause, and direct another trial to ascertain the facts.

SEC. 59. *Be it further enacted,* That the supreme court, on affirming any judgment or decision of the circuit court, may award to the appellee or defendant in error, such damages, to be paid by the appellant or plaintiff in error, as to them shall seem proper, not exceeding ten per centum on the amount of the judgment.

Judgt. affirm-
ed damages
may be award-
ed.

SEC. 60. *Be it further enacted,* That in all cases of appeal or writs of error decided by the supreme court, the said court may order the record in the cause, with their decision and determination thereon written, and duly certified, to be transmitted to the proper circuit court, on payment of the costs incurred in the supreme court, and such decision and determination shall be duly carried into execution by such circuit court, or the supreme court may award execution to carry the said decision and determination into effect.

S. C. may cer-
tify their judgt
to court below
or may carry
the same into
execution.

SEC. 61. *Be it further enacted,* That judgments obtained in the supreme court shall be a lien on the real estate of the person against whom the same are rendered, situated in any part of the judicial district for which the court is held, and judgments rendered by circuit courts shall be a lien on the real estate of the person against whom they are rendered, situated in the county for which the court is held, and all liens shall commence on the day of the rendition of the judgment, and shall continue for three years thereafter and no longer unless the plaintiff in such judgment or his legal representatives shall within the said term of three years, sue out of the court in which the judgment was rendered a *scire facias* to revive the same, which *scire facias* shall be served on the terre tenants or other person occupying the lands or tenements bound by the judgment, and on the defendant or his assigns or the heirs, executors or administrators of the defendant or his assigns, and where there is no terre tenants or occupant of the lands or tenements, and the defendant or his assigns or the executors or administrators of such defendant or his assigns cannot be found, the court shall cause public notice to be published in some newspaper printed in this state for three weeks successively, requiring all persons interested, to shew cause why such judgment should not be revived, and on due proof of the service of the *scire facias* or of the publication of such notice as aforesaid, the court, unless sufficient cause to the contrary be shewn, at the second term after issuing

Judgt. in S. C.
lien on defts.
estate in dis-
trict.

Lien to con-
tinue 3 years
only, unless
sc. fa. issue.

Sc. fa. how &
by whom ser-
ved.

the writ, shall revive the said judgment during another period of three years, against the lands and tenements of the said defendant, and so on, from time to time, as often as necessary; and the writs of *scire facias* hereby authorized may be issued by any court of record wherein the judgment was rendered, to any county in this state where the defendant resides.

Sheriff and coron-
er not quali-
fied to act,
court may ap-
point one or
more persons
to act.

SEC. 62. *Be it further enacted,* That in case there be no sheriff or coroner or neither of them qualified to act, on account of interest or prejudice or otherwise, the courts respectively may appoint one or more proper persons to execute the duties of sheriff and direct their process to him or them accordingly, and they shall be entitled to the legal fees allowed to sheriffs for like services.

Suit dismissed
for non atten-
dance of at-
torney, to be
at his cost, and
he liable for
damages.

SEC. 63. *Be it further enacted,* That if any suit shall be dismissed for the non-attendance of any attorney practicing in any of the superior or inferior courts, not having a just and reasonable excuse, it shall be at his cost, and he shall moreover be liable for all damages his client may sustain by such dismissal or other neglect of his duty, to be recovered in any court of record within this state.

Former acts
repealed.

SEC. 64. *Be it further enacted,* That "a law to amend an act entitled an act establishing courts of judicature," passed by the Governor and judges the seventeenth of May eighteen hundred and seven, "an act establishing courts of justice and regulating judicial proceedings," passed by the Governor and judges the third day of July eighteen hundred and seven, except the forty-second, forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh, forty-eighth, forty-ninth, fifty-first, fifty-second, fifty-third, fifty-fourth, fifty-eighth and seventieth sections thereof, "an act to amend an act entitled an act establishing courts of justice and regulating judicial proceedings," passed by the governor and judges the seventh day of November, eighteen hundred and eight, except the sixth section thereof, "an act supplementary to an act entitled an act establishing courts of justice and regulating judicial proceeding," passed by the governor and judges the thirtieth day of October, eighteen hundred and ten, except the fifth and sixth sections thereof; "an act establishing courts of common pleas and for other purposes," approved the twentieth of August, eighteen hundred and thirteen, except the thirteenth section thereof; a bill entitled an act fixing the times and places of holding the superior and inferior courts in this territory, and for other purposes," approved the nineteenth of January, eighteen hundred and fourteen, "an act establishing cir-

circuit courts and county courts, and for other purposes," approved the fourth day of January, eighteen hundred and fifteen; "an act authorizing the judges of the circuit courts, and the clerks of the superior and said circuit courts, to order bail to be taken in certain cases," approved January the twenty-first, eighteen hundred and fifteen; "an act altering the times and places of holding superior and circuit courts of this territory, and for other purposes," approved January the twenty-first, eighteen hundred and sixteen; an act supplementary to the act entitled an act establishing circuit courts and county courts, and for other purposes," approved the first of February, eighteen hundred and seventeen; the first, second, third and fourth sections of an act supplementary to the several acts establishing courts of justice and regulating judicial proceedings," approved the twenty-third day of December, eighteen hundred and eighteen; the twentieth section of "an act establishing circuit and county courts," approved the twenty eighth day of November, eighteen hundred and twenty; the sixth, seventh, ninth, tenth, fifteenth, twenty-first and twenty-second sections of "an act regulating the proceedings of the supreme court," approved the twelfth day of December, eighteen hundred and twenty; the third and fourth sections of "an act to amend certain acts respecting the proceedings in chancery and suits at law," approved the twenty-seventh of June, eighteen hundred and twenty-one; and the first and second sections of "an act further to regulate judicial proceedings and abolish imprisonment for debt in certain cases," approved the twenty-eighth day of June, in the year eighteen hundred and twenty-one, shall be and the same are hereby repealed: *Provided*, That this act shall not be construed to annul, abate or effect any proceedings heretofore had or commenced by virtue of any act clause or provision hereby repealed, but the same shall be as effectual in law as if this act had not passed; and in all matters heretofore commenced and now pending, proceedings may be had according to the provisions of this act or the acts under which they are commenced. This act shall take effect and be in force from and after the first day of March next.

Approved, 11th January, 1822.

CHAP. L.

AN ACT to direct descents and distributions.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That henceforth when any person hav-

Real estate of inheritance of persons bying intestate to descend in parce- nary to their kindred.

ing title to any real estate of inheritance, or to any personal estate not sold and disposed of, or otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary to his or her kindred, male and female, after the payment of his debts, and deducting the widows right of dower. (if there be one) in the following course, that is to say: First, to his or her children, or their descendants, if any there be, in equal parts. Second, if there be no children, or their descendants, then to his or her father, mother, brothers and sisters, and their descendants, or such of them as there be, in equal parts. Third, if there be no children, or their descendants, father, mother, brother or sister, nor their descendants, then to the grandfather, grandmother, uncles and aunts, and their descendants, or such of them as there be, in equal parts. Fourth, if there be no children, or their descendants, father, mother, brother, sister, nor their descendants, grandfather, grandmother, uncle, aunt, nor their descendants, then to the great grandfathers, great grandmothers, and the brothers and sisters of the grandfathers and grandmothers, and their descendants, or such of them as there be, in equal parts, and so on in other cases without end, passing to the nearest lineal ancestors, and their children, and their descendants, or such of them as there be, in equal parts.

Course of descents.

Posthumous children to inherit, but none except the children of the intestate to take unless in being at the intestates death.

Rule where the inheritance is to go by moieties to the paternal and maternal kindred.

Where some one of the whole and

SEC. 2. *Be it further enacted,* That all posthumous children of the intestate shall inherit in like manner as if born in the life time of the intestate, but no right of inheritance shall accrue to any person whatsoever other than the children of the intestate, unless they be in being and capable in law to take as heirs at the time of the intestates death.

SEC. 3. *Be it further enacted,* That if there be no children, or their descendants, father, mother, brother nor sister, nor their descendants, nor any paternal nor maternal kindred capable of inheriting, the whole shall go to the wife or husband of the intestate, and if the wife or husband be dead, it shall go to her or his kindred in the like course as if such wife or husband had survived the intestate, and then died entitled to the estate.

SEC. 4. *Be it further enacted,* That in all cases before mentioned, where the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if

part of such collaterals be of the whole blood of the intestate, and the other part of the half blood only, those of the half blood shall inherit only half as much as those of the whole blood, but if all such collaterals be of the half blood, they shall have whole portions, only giving to the ascendants (if there be any) double portions.

SEC. 5. *Be it further enacted,* That where several lineal descendants and all of equal degree of consanguinity to the intestate however remote, or his or her father, mother, brothers or sisters, or his or her grandfather, grandmother, uncles and aunts, or any ancestor living, and their children come into partition, they shall take *per capita*, that is to say by persons; and where a part of them being dead and part living, the issue of those dead have right to partition, such issue shall take *per stirpes* or by stocks, that is to say, the share of their deceased parent.

SEC. 6. *Be it further enacted,* That where any of the children of the intestate shall have received in his life time any real or personal estate by way of advancement, shall choose to come into partition with the other parcellers, such advancement shall be brought into hotchpot, with the estate descended.

SEC. 7. *Be it further enacted,* That in making title by descent, it shall be no bar to a demandant, that any ancestor, through whom he derives his descent from the intestate, is or has been an alien. Bastards also shall be capable of inheriting and transmitting inheritance on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

SEC. 8. *Be it further enacted,* That when a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children if recognized by him as his, shall be thereby legitimated, and the issue of all marriages deemed null in law or dissolved by divorce shall nevertheless be legitimate.

SEC. 9. *Be it further enacted,* That all acts and parts of acts coming within the purview of this act shall be and the same are hereby repealed. This act shall take effect and be in force from and after the passage thereof.

Approved, 11th January, 1822.

CHAP. LI.

AN ACT supplementary to the act fixing the permanent seat of government.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the commissioners appointed

Comm'rs. to
meet and lay
out town.

to select a permanent seat of government shall meet on the first Monday in March next, or as soon thereafter as may be, on the land selected by the act to which this is a supplement, and proceed immediately to lay out a town thereon to contain at least one thousand lots, and in blocks or squares of such size and dimensions as the commissioners or a majority of them shall agree, and the principal street of said town shall be not less than one hundred nor more than one hundred and twenty feet wide, the other streets not less than eighty feet, and the alleys twenty feet wide.

Out lots.

SEC. 2. *Be it further enacted*, That the said commissioners shall lay off the remaining part of the four sections of land selected as aforesaid, into lots of five, ten, twenty and forty acres, and divide the same by alleys, so as to secure to each lot free and open communication with the said town.

Plan of town
to be reported
to Gen. As-
sembly.

SEC. 3. *Be it further enacted*, That the said commissioners shall report to the next session of the General Assembly, a plan of said town and of the other lots laid off as aforesaid, and shall on the first Monday, which will be in the month of May, in the year eighteen hundred and twenty-three, proceed to sell all of the said town lots and out lots on the premises, to the highest bidder for equal instalments, one third payable on the said first Monday in May, and the remaining two thirds in two equal annual instalments, except such lots as may be reserved for public use, and such as may be reserved by the next General Assembly, unless otherwise directed by law.

Commission-
ers to sell.

Terms of sale.

Town to be
called city of
Jefferson.

SEC. 4. *Be it further enacted*, That the town to be laid out at the permanent seat of government shall be called "City of Jefferson," that there shall be three squares laid off to contain each four acres, and that the Govern-

Gor to appoint
surveyor to
lay out town.

or of this state shall appoint a surveyor whose duty it shall be to meet the commissioners at the time and place appointed, and under their direction lay out the town and out lots as soon as may be, and that the said commissioners shall receive and transmit the same to the next General Assembly. any proposals made by any person or persons having claim to any part of the said lands selected for the permanent seat of government, in order that any such claim or claims may be adjusted: *Provided*, nothing herein contained shall in any wise be construed to legalize or acknowledge such claim as valid in law.

Comm'rs. to
receive propo-
sals from those
having claims
to any part of
the land

Proviso.

Compensa-
tion to com'rs.

SEC. 5. *Be it further enacted*, That the compensation to the commissioners for services to be rendered under this act, shall be the same as heretofore allowed, and they are hereby empowered to audit and settle with the

surveyor for the necessary charges and expences of carrying this act into effect, and the auditor of public accounts shall draw on the treasury accordingly. To settle acct. with surveyor.

SEC. 6. *Be it further enacted,* That the sum of one hundred dollars shall be given as a premium to the person who will present to the next session of the General Assembly the best plan for the public buildings to be erected at the permanent seat of government: *Provided,* such plan be approved of by the next General Assembly. Premium for a plan of public buildings.

This act to be in force from and after its passage.

Approved, 11th January, 1822.

CHAP. LII.

AN ACT establishing Judicial Districts and Circuits, and prescribing the times and places of holding courts.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That this state shall be and is hereby divided into four judicial districts, to wit: the counties of Cole, Cooper, Saline, Lillard, Clay, Ray, Chariton, Howard and Boone, shall compose the first district; the counties of Gasconade, Callaway, Montgomery, St. Charles, Lincoln, Pike and Ralls, shall compose the second district; the counties of St. Louis, Franklin, Washington, St. Francois and Jefferson, shall compose the third district; and the counties of New Madrid, Scott, Cape Girardeau, Perry, Ste. Genevieve, Madison and Wayne, shall compose the fourth district. Judicial districts.

SEC. 2. *Be it further enacted,* That the supreme court shall be holden at the times and places following, to wit: for the first judicial district, at the town of Franklin, in the county of Howard, on the second Mondays of April and October; for the second judicial district, at the town of St. Charles, in the county of St. Charles, on the fourth Mondays of April and October; for the third judicial district, at St. Louis, in the county of St. Louis, on the first Mondays of May and November; and for the fourth judicial district, at Jackson, in the county of Cape Girardeau, on the fourth Mondays of May and November. Times and places of holding supreme court.

SEC. 3. *Be it further enacted,* That the superior courts of chancery shall be holden by the chancellor, at the places appointed for holding the supreme court in each judicial district respectively, at the times following, to wit: for the first district, on the second Mondays of February and August; for the second district, on the fourth Mondays of February and August; for the third district, on the first Mondays of March and September; and for the fourth district, on the fourth Mondays of March and September. Times and places of holding superior court of chancery.

Judicial cir-
cuits.

SEC. 4. *Be it further enacted,* That for the purpose of holding circuit courts, the counties composing the first judicial district, shall compose the first judicial circuit; the counties composing the second judicial district, shall compose the second judicial circuit; the counties composing the third judicial district, shall compose the third judicial circuit; and the counties composing the fourth judicial district, shall compose the fourth judicial circuit.

Terms of cir-
cuit courts.

SEC. 5. *Be it further enacted,* That three terms of the circuit courts shall be holden in the several counties in this state, in every year, at the places appointed for holding courts therein, at the times following, to wit: in the first judicial circuit, for the county of Boone, on the third Mondays of January, May and September; for the county of Howard, on the fourth Mondays of January, May and September; for the county of Chariton, on the third Mondays of February, June and October; for the county of Ray, on the fourth Mondays of February, June and October; for the county of Clay, on the first Mondays of March, July and November, for the county of Lillard, on the second Mondays of March, July and November; for the county of Saline, on the third Mondays of March, July and November; for the county of Cooper, on the fourth Mondays of March, July and November; for the county of Cole, on the first Mondays of April, August and December. In the second judicial circuit, for the county of Gasconade, on the third Mondays of February, June and October; for the county of Callaway, on the first Mondays of March, July and November; for the county of Montgomery, on the second Mondays of March, July and November; for the county of St. Charles, on the third Mondays of March, July and November; for the county of Lincoln, on the first Mondays of April, August and December; for the county of Pike, on the second Mondays of April, August and December; for the county of Ralls, on the third Mondays of April, August and December. In the third judicial circuit, for the county of St. Louis, on the first Mondays of February, June and October; for the county of Franklin, on the third Mondays of March, July and November; for the county of Washington, on the fourth Mondays of March, July and November; for the county of St. Francois, on the second Mondays of April, August and December; for the county of Jefferson, on the third Mondays of April, August and December. And in the fourth judicial circuit, for the county of New Madrid, on the first Mondays of February, June and October; for the county of Scott, on the second Mondays of February, June and October; for the county of Wayne,

on the fourth Mondays of February, June and October; for the county of Madison, on the first Mondays of March, July and November; for the county of Ste. Genevieve, on the second Mondays of March, July and November; for the county of Perry, on the third Mondays of March, July and November; and for the county of Cape Girardeau, on the second Mondays of April, August and December.

SEC. 6. *Be it further enacted*, That four terms of the county ^{Terms of C'ty. courts.} courts shall be holden in each county in every year, at the places appointed for holding courts therein respectively, at the times following, to wit: for the counties of Lillard, Ray, Howard, Gasconade, Pike, Jefferson and Ste. Genevieve, on the first Mondays of February, May, August and November; for the counties of Saline, Clay, Ralls, Washington, New Madrid, Perry and Wayne, on the second Mondays of February, May, August and November; for the counties of Ray, Cooper, St. Charles, Callaway, Franklin, Madison and Scott, on the third Mondays of February, May, August and November; for the counties of Cole, Chariton, Montgomery, Lincoln, St. Louis, St. Francois and Cape Girardeau, on the fourth Mondays of February, May, August and November: *Provided*, That the several county courts shall have power to ^{C'ty courts may hold special sessions.} hold special sessions, when necessary for the discharge of any of the duties enjoined on them by law.

SEC. 7. *Be it further enacted*, That all suits and process made, or to be made, returnable to the next terms of the several courts, as heretofore established by law, shall be returnable to the first terms of the respective courts to be holden by virtue of this act; and all sales of property which would have been made at the first terms as heretofore established, shall be made during the first terms to be holden by virtue of this act. This act shall take effect, and be in force, from and after the passage thereof: *Provided*, That the first term of the superior court of chancery, to be holden in the first judicial district, shall be holden at the time and place now prescribed by law, and the second term of said court shall be holden on the second Monday of August next. ^{Return of process and sale of property regulated.}

Approved, 11th January, 1822.

CHAP. LIII.

AN ACT repealing an act entitled an act for the relief of Debtors and Creditors.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That an act entitled an act for the re- ^{Act repealed.}

Proceedings
under it not
invalid.

lief of debtors and creditors, be, and the same is hereby repealed: *Provided, nevertheless,* That nothing herein contained shall be construed to render invalid any proceedings had under the authority of the said recited act before the repealing thereof. This act to be in force from and after the passage thereof.

Approved, 11th January, 1822.

CHAP. LIV.

AN ACT supplementary to an act establishing Judicial Districts and Circuits, and prescribing the times and places of holding Courts.

Former act
repealed.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That as much of the act to which this act is a supplement, as directs the times of holding the circuit courts of the third district in the county of St. Francois and Jefferson, commencing on the several days therein directed, be, and the same is hereby repealed; and hereafter the said circuit courts shall be held, as follows, viz: for the county of St. Francois, on the first Mondays of April, August and December; for the county of Jefferson, on the second Mondays of April, August and December, in each and every year.

In St. Francois
1st Monday
April, August
and Dec.
In Jefferson,
2nd Monday.

Approved, 11th January, 1822.

CHAP. LV.

AN ACT supplementary to an act entitled an act authorizing an amount of Loan Office Certificates to be placed in the State Treasury, for the purpose of redeeming the Certificates drawn by the Auditor of Public Accounts on the State Treasurer.

Preamble.

WHEREAS George H. Kennerly for himself James Kennerly and Ruggles Whiting have represented to this General Assembly that they have the necessary machinery, and wish to borrow ten thousand dollars of loan office certificates to enable them to erect and put into operation a steam grist mill, and inasmuch as it is the true policy of this state to promote industry and encourage valuable improvements: Therefore,

Aud'r. & treasurer to deliver \$10,000 to clk of 4th L. O. district.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That the auditor and treasurer be empowered, and they are hereby required to deliver to the clerk of the fourth loan office district the sum of ten thousand dollars in loan office certificates, out of the sum of fifty thousand dollars authorized to be issued by the act to which this act is a supplement; and the commissioners of the said loan office district are hereby empow-

Com'rs. to loan the same to G.

ered and required to loan the same in the same manner and take the same security for the payment of all the loans and re-loans as provided by the act establishing loan offices, and the act supplementary thereto, to George H. Kennerly, James Kennerly and Ruggles Whiting, upon the conditions hereinafter provided.

Sec. 2. *Be it further enacted*, That before the commissioners of said office shall advance any part of the loan hereby authorized, the said George H. Kennerly, James Kennerly and Ruggles Whiting shall produce satisfactory evidence that they have brought into the county of St. Louis the necessary machinery, and further execute a mortgage on one half acre of land on which the mill shall be erected; which mortgage shall be, and the same is hereby declared to be a lien upon the land and all improvements made thereon, and also the machinery aforesaid, until the whole of the loan and interest thereon be paid: *Provided*, That it shall be made appear to the satisfaction of the commissioners that the said machinery is the property of the said George H. Kennerly, James Kennerly and Ruggles Whiting, and free from any kind of embarrassments whatever at the time the mortgage for the same shall be taken: *Provided also*, That if the said George H. Kennerly, James Kennerly and Ruggles Whiting shall neglect or refuse for six months to take proper steps to obtain the loan and carry the object of this act into effect, that the commissioners may loan the said ten thousand dollars of loan office certificates to any person or company who will give security for the same, and carry the objects of this act into operation, in the same manner the said George H. Kennerly, James Kennerly and Ruggles Whiting could or ought to have done, agreeably to the provisions of this act.

Sec. 3. *Be it further enacted*, That the commissioners aforesaid shall never at any one time advance more than one thousand dollars of the loan hereby authorized, and if it shall at any time appear to them that the loan applied for is not intended to be applied as intended by this act, or that the sums theretofore advanced have not been applied as herein contemplated, it shall be their duty to withhold any further advance, and if the said George H. Kennerly, James Kennerly and Ruggles Whiting, shall not within two years from this time have erected and put into operation on the land mortgaged, a steam gristmill, capable of manufacturing fifty barrels of good superfine flour per day, in such case it shall be the duty of the said commissioners to demand the payment of the sum loaned, with interest thereon, at the rate of six per cent. per an-

H. Kennerly,
J. Kennerly &
R. Whiting,

Conditions on
which loan is
to be made.

Not more than
\$1000 to be
loaned at any
one time.

Mill not erect-
ed within two
years, com'is.
to demand
payment of
the loan.

num, and in default of payment, to proceed immediately to collect the same as by law provided.

Two years interest to be released, if the loan be faithfully applied.

Loan to be repaid in four annual instalments.

SEC. 4. *Be it further enacted*, That if it shall appear that the loan hereby authorized is faithfully applied as herein intended, the commissioners of the said loan office shall release unto the said George H. Kennerly, James Kennerly and Ruggles Whiting all interest on the several proportions of the said loan for the term of five years from and after the first day July next, and the said George H. Kennerly, James Kennerly and Ruggles Whiting shall be required to repay the certificates to them loaned in four annual instalments, with interest, at the rate of six per cent. per annum, to be calculated from the first day of July, which will be in the year one thousand eight hundred and twenty seven, the first instalment to be paid on the first day of July, which will be in the year one thousand eight hundred twenty eight: *Provided*, nothing herein contained shall be construed to release the two per cent. per annum interest accruing on the certificates loaned, which in no case shall be estimated in the calculation of interest, but shall be refunded to the state on all certificates loaned.

Auditor and treasurer to appropriate any certs. in their offices.

SEC. 5. *Be it further enacted*, That the auditor and treasurer are hereby required to appropriate any loan office certificates which are now or may hereafter be in their offices, and which may be necessary to carry into effect this act, or the act to which this is a supplement.

Aud'r. & treasurer to reserve \$40,000 to be loaned under the direction of next Gen. Assembly

SEC. 6. *Be it further enacted*, That the auditor and treasurer shall reserve so much of the sum authorized to be issued by the act to which this act is a supplement, as may not be required to redeem the warrants drawn on the treasury and carry this act into effect, and so much of the instalments required to be paid by the several loan offices as will make the sum of forty thousand dollars, and the next General Assembly shall provide by law that the same be loaned under proper regulations for the encouragement of such objects of internal improvement as they deem expedient.

SEC. 7. *Be it further enacted*, That the treasurer be and he is hereby authorized to pay out in discharge of auditors warrants any loan office certificates which may be paid into the treasury as revenue.

Approved, 11th January, 1822.

CHAP. LVI.

AN ACT supplementary to an act entitled an act for selecting six salt springs for the use of the state.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri;* That Richard Matson of the county of Ralls, and Henry Dodge of the county of St. Genevieve, and Julius Emmons of the county of Lillard, be, and they are hereby appointed commissioners, to make a selection of six additional salt springs with six sections of land adjoining each, belonging to the United States; which springs shall be in their opinion the most-valuable to be selected for the use of the state, on account of their situation and the profits to be derived to the state from the working of them: and the said commissioners thus appointed shall meet at the town of Louisiana, in the county of Pike, on the third Mo day of September next, and proceed to perform the duties enjoined on them by this act.

Com'rs. appointed to select six additional salt springs.

To meet at Louisiana on 3d Monday in Sept. next.

SEC. 2. *Be it further enacted,* That the aforesaid commissioners shall make report to the next General Assembly, and shall receive the same compensation and be governed by the same regulations and restrictions, as is provided for the commissioners appointed in the act to which this is a supplement.

To report to next General Assembly.

SEC. 3. *Be it further enacted,* That if any one or more of the above named commissioners should die, or refuse to perform the duties required of him or them in this act, it shall and may be lawful for the Governor to appoint some fit person to fill such vacancy, and it shall be the duty of the Governor to notify the commissioners named in the first section of this act of their appointment.

Vacancies, how supplied.

SEC. 4. *Be it further enacted,* That the secretary of state be, and he is hereby required to notify the register of the proper land office that the General Assembly have caused to be selected, for the use of this state, six of the twelve salt springs, with land adjoining to each, under an act of the Congress of the United States entitled "an act to authorize the people of Missouri territory to form a constitution and state government and for the admission of such state into the union on an equal footing with the original states, and to prohibit slavery in certain territories," viz: first, the Buffalo Lick in range sixteen, town fifty north, sections twelve, thirteen and the north half of section fourteen, they being reserved by government, and of the adjoining lands the following, north-east and north west of fifteen, north east, south west and south east fraction of ten, containing sixty acres, south east and east half of south west of one, range fifteen, town fif-

Secretary of State to notify register of land office of the lands selected.

ty, west half of north west of nineteen, north west, south west and south east of eighteen, and also the west half of north east of eighteen, south west and east half of south east of seven and north east of same, west half of six, and so much of the north east of six as shall make the complement, including the south east quarter of thirty six, town fifty one, range sixteen. Second, Salt Pond, in range fifteen west and town fifty, north section twelve, on the north west of which is the spring, north east, north west and south east of one, sections two, eleven, north east and south east of ten, north west and west half of north east of fourteen, north east and north west of thirteen, in range fourteen, town fifty, north west and west half of north east of seven, south west and south east of six, situated on the north of the Missouri river, and about fourteen miles from Franklin. Third, the Monetteau Lick, in range fifteen west, and township forty nine, north sections two and eleven reserved by government, and the following, viz: north east and east half of north west of twelve, west half of south east of one, north east and south east of four, north west and east half of south west of ten, in town fifty, south east and east half of south west of twenty six, north east, south east and south west of thirty five, south west of thirty six, town forty nine, range fourteen, north east and north west of seven, north east, north west and west half of south east of six, south west and west half of the south east of thirty one, of town fifty, range fourteen, situated on the north of the Missouri, and about six miles from the Missouri river. Fourth, in range twenty west, town fifty, north sections twenty seven, twenty eight and thirty three reserved by government, situate about eight miles from the Missouri river, on the south side, and on the salt fork of the Lamine. Fifth, range nineteen and twenty, township forty eight, a spring at present occupied by Elias Barcroft and Bird Lockhart, situated on the north east, north west, south east quarters of section twenty four, the north east of twenty five, the north east and south east of fourteen, entire section thirteen, of range nineteen, town forty eight, sections nineteen and thirty, north east and north west of twenty and twenty one, north half of thirty one, being situated about seven miles from the navigable water of the Lamine. Sixth, range nineteen, town forty eight, spring situated on the south west quarter of section thirteen, (at present occupied by Robert and John G. Heath) and the residue of section thirteen, sections one and two, south east of three, north east of ten, the whole of eleven, and the north east and north west of twenty three, and section twelve,

being within a half a mile of the navigable water of the
Lamine.

SEC. 5. *Be it further enacted*, That the said commis-
sioners be, and they are hereby empowered and required
to estimate the worth of all valuable improvements made
at any of the salt springs belonging to this state, and al-
low the occupant to continue to manufacture salt thereat,
rent free, until the first Monday in March, eighteen hun-
dred and twenty three: *Provided*, Such occupant shall
first enter into bond, with sufficient security for twice the
amount of the value of such improvements, to this state,
and conditioned that such occupant, at the time limited,
will deliver to any authorized agent of this state, the salt
springs thus continued in his or their possession, with the
improvements thereon, in like condition and good order,
and also that no unnecessary waste shall be committed on
the premises thus continued in their possession, and that
such occupant will sell to citizens of this state all or any
of the salt by them manufactured (if so required) for loan
office certificates at par, at a price not exceeding one dol-
lar and twenty five cents per bushel: *And provided also*,

Value of im-
provements to
be estimated,
and occupant
to retain pos-
session till
March, 1823:
Proviso.

Price at which
salt is to be
sold.

That if said commissioners do believe that the use of the
premises until the first Monday which will be in the
month of March, in the year one thousand eight hundred
and twenty three, will be more than an equivalent for the
improvements aforesaid, the occupant shall enter into
bond, conditioned to pay to this state such sum as the
commissioners aforesaid may deem just and right: *And*
provided also, That nothing in this act contained shall be
so construed as to extend to any improvements except
such as are legally attached to the soil.

Further provi-
so.

SEC. 6. *Be it further enacted*, That the said commis-
sioners shall also select three other sections of land ad-
joining the selection made in township fifty, range twenty,
and notify the register of the proper land office accord-
ingly.

Additional se-
lection to be
made.

Approved, 12th January, 1822.

CHAP. LVII.

AN ACT regulating the apportionment of representation among the sev-
eral counties in this state.

SECTION 1. *Be it enacted by the General Assembly of the*
State of Missouri, That there shall be one representative
in the Senate for each eighteen hundred and fifty free
white males, as near as circumstances will admit of, with-
out dividing of counties, to wit: the counties of Clay,
Ray, Lillard and Chariton, shall compose one senatorial

Senatorial dis-
tricts regulated

District, and elect one senator; the county of Howard shall compose the second district, and elect one senator, having at present one whose term of service will not expire for two years; the county of Boone shall form the third district, and elect one senator; the counties of Saline, Cooper and Cole, shall form the fourth district, with a senator whose term of service will not expire for two years; the counties of Callaway, Gasconade and Franklin, shall form the fifth district, and elect one senator; the counties of Montgomery and Lincoln shall form the sixth district, with a senator whose term of service will not expire for two years; the counties of Pike and Ralls shall form the seventh district, and elect one senator; the county of St. Charles shall form the eighth district, with a senator whose term of service will not expire for two years; the county of St. Louis shall form the ninth senatorial district, and elect one senator, having one whose term of service will not expire for two years; the counties of Jefferson and Washington shall form the tenth district, and elect one senator; the counties of Sté. Genevieve, Perry and St. Francois, shall form the eleventh district, and elect one senator; the counties of Madison and Wayne shall form the twelfth district, with a senator whose term of service will not expire for two years; the county of Cape Girardeau shall form the thirteenth district, and elect one senator, having one whose term of service will not expire for two years; the counties of Scott and New Madrid shall compose the fourteenth district, and elect one senator.

Apportionment of members of the H. of Rep.

SEC. 2. *Be it further enacted*, That the apportionment of the members of the House of Representatives of the second General Assembly of this state shall be as follows; to wit: from the counties of Cape Girardeau and St. Louis, six members each; from the county of Howard, five members; from the counties of Cooper, Boone, St. Charles and Washington, three members each; from the counties of Montgomery, Franklin, Pike, Jefferson and St. Genevieve, two members each, and from each of the other counties in this state, one member. This act shall take effect and be in force from and after the passage.

Approved, 12th January, 1822.

CHAP. LVIII.

AN ACT supplementary to an act establishing an academy in the town of St. Charles, and an academy in the town of Franklin, in the state of Missouri.

SECTION 1. *Be it enacted by the General Assembly of the*

State of Missouri, That an academy be, and the same is hereby established in the town of Louisiana, in the county of Pike, which shall be called and known by the name of Louisiana Academy; that John M'Cune, William P. Holliday, James Watson, Michael J. Noyes, John E. Allen, John Jordan and Richard Matson be and they are hereby constituted a body politic and corporate, to be known by the name and style of the trustees of the Louisiana academy, and by that name shall have perpetual succession and a common seal; that the said trustees, and their successors, shall take the same oath, perform the same duties, possess the same powers, and be entitled to the same privileges in every respect, and vacancies filled in the same manner, as provided for by the act to which this is a supplement: *Provided*, That there shall be no compulsion to teach the French language in said Louisiana academy. This act to be in force from and after its passage.

Academy established in the town of Louisiana, and trustees appointed.

Their powers and duties.

Proviso.

Approved, 12th January, 1822.

CHAP. LIX.

AN ACT to provide for printing and distributing the laws and journals.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*. That the Secretary of State be and he is hereby authorized and required to cause to be printed, at the expense of the state, in pamphlet form, eight hundred copies of the laws and joint resolutions passed at the present session of the General Assembly; and five hundred copies of the journals of the Senate and House of Representatives, and a copy for each militia officer in this state, and twenty five copies extra for each county, to be deposited in the clerks office, of "an act to amend and reduce into one the several acts of the General Assembly for regulating the militia of this state," in separate pamphlets, and cause the same to be distributed as soon as possible.

Secretary of State to cause laws and journals to be printed and distributed.

SEC. 2. *Be it further enacted*, That the laws and journals, when printed, shall be distributed to all persons heretofore authorized to receive copies of the laws, for which purpose a sufficient number of copies shall be forwarded by the Secretary of State to the clerks of the circuit courts of the several counties, and the auditor and treasurer, on the order of the Secretary of State, shall audit and pay the sums to be expended by virtue of this law.

To whom distributed.

Approved, 12th January, 1822.

CHAP. LX.

AN ACT supplementary to an act entitled an act for the establishment of Loan Offices.

Clerk of ct. ct.
may take note
from applicant
and certify
the same to
the com'rs.

Valuers to cer-
tify.

Com'rs. may
proceed to loan

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That when any person shall wish to obtain a loan from any of the loan offices in this state on personal security, and the residence of such person and his security shall be so remote as to prevent the commissioners of the loan office to whom application may be made from judging correctly of the propriety of making such loan, it shall and may be lawful for the several clerks of the circuit courts in this state, to take a note from said applicant according with the provisions of the act to which this is a supplement, and certify and transmit the same to the commissioners of the loan office in the district in which said applicant may reside: *Provided,* That in all cases where such application be made, the clerk shall not take such note, except such application be accompanied with a certificate from the valuers or a majority of them, to be appointed by virtue of the first section of the act entitled "an act pointing out the manner that executions may be stayed and regulating the sale of property under execution," in the township where such applicant may reside, shewing the responsibility of said applicant and his security or securities, and until the county court shall appoint such valuers, the certificate may be granted by the justices of the county court or a majority of them in the county where the applicant shall reside.

SEC. 2. *Be it further enacted,* That when said clerks shall certify the facts required by this act to the commissioners aforesaid, said commissioners shall, if they deem the security so taken by the said clerks, and the vouchers transmitted by them sufficient, proceed to loan said applicant any amount of loan office certificates to which he may be entitled. This act shall take effect and be in force from and after the passage thereof.

Approved, 12th January, 1822.

CHAP. LXI.

AN ACT to amend an act entitled an act for levying, assessing and collecting state and county taxes.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That it shall be the duty of the several county courts in this state, at their first term, or as soon thereafter as may be practicable after the passage of

this act, to appoint one assessor in each township of their respective counties, whose duty it shall be within twenty days after being notified of their appointments, to require the inhabitants of said township to attend at such times and places not less than two nor more than four, as may be pointed out by said assessor by advertisements placed up in at least five of the most public places of their respective townships, giving at least twenty days notice to said inhabitants, to attend at such times and places so appointed by said assessor; then and there to give in a true and perfect list or statement of all and every species of property owned by him or them which is made subject to taxation, together with a statement of the value thereof, which list or statement so given shall be sworn to or affirmed (as the case may be) by the person delivering the same, which oath or affirmation the said assessor is hereby authorized and required to administer.

assessor in each township.

His duty:

List of property & its value, to be given in on oath.

Assessor to administer oath.

SEC. 2. *Be it further enacted*, That if any assessor shall be of opinion that the list or statement returned to him be incorrect, or the property be returned above or below its real value, he shall charge the same to such value as he may think right, giving notice to the person making such list or statement, who shall be entitled to an appeal to the county court, to be determined at the term to which such list is returned.

Assessor may alter valuation

Appeal to the county court.

SEC. 3. *Be it further enacted*, That when any person or persons shall neglect or refuse to attend the assessor and deliver by himself or agent, the list or statement required by the first section of this act, or shall fail to do the same within thirty days thereafter at the place of residence of such assessor, not having a sufficient excuse to be judged of by the county court on application of the party aggrieved, and at the term of the court to which such lists are made returnable, the property of such delinquent shall be assessed and taxed double.

Persons failing to deliver list, property to be taxed double.

SEC. 4. *Be it further enacted*, That the assessors appointed under the provisions of this act, shall as a full compensation for their services, be exempted from serving as grand and petit jurors, performing militia duty and working on public roads and highways, and in addition to the above exemptions shall be allowed one dollar per day to be paid out of the state treasury: *Provided*, That it shall not be necessary for the assessors to make out and certify to each individual a list of his taxable property given in, or tax assessed thereon as heretofore required.

Compensation of assessors.

SEC. 5. *Be it further enacted*, That there shall be levied and collected from every free white male person with-

Tax of 50 cts. on every free white male.

person above
the age of 21
years

Former act
repealed.

in this state and who may be above the age of twenty one years, a tax of fifty cents.

SEC. 6. *Be it further enacted*, That so much of the act to which this is an amendment as imposes a tax on unmarried free white male persons, and all acts and parts of acts repugnant to or inconsistent with this act, be, and the same is hereby repealed.

Approved, 12th January, 1822.

CHAP. LXII.

AN ACT supplementary to an act regulating elections.

Elections
when & where
to be held.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That on the first Monday of August next, and on the first Monday in August biennially thereafter, an election shall be held in each township in the several counties within this state, for a representative to the Congress of the United States, for representatives to the General Assembly of this state, and for senators in those districts where the term of service of those elected at the last preceding election, shall have expired, and for sheriffs, coroners and constables, which election shall be held and conducted according to the existing laws of this state.

Election for
Gov. & Lt. Gov
when held.

SEC. 2. *Be it further enacted*, That on the first Monday in August, one thousand eight hundred and twenty-four, and on the first Monday in August in every fourth year thereafter, there shall be held at the places, and under the regulations aforesaid, an election for Governor and Lieutenant Governor, a certificate of which shall be transmitted to the General Assembly at their next meeting thereafter.

Constables,
how elected.

SEC. 3. *Be it further enacted*. That the elections of constables shall be by the qualified electors residing within the township for which he shall be elected, which shall be certified by the judges and clerks of the election to the county court of the county where such election shall be held, and in case of a tie, or contest between opposing candidates the same shall be determined by said court, who shall have power to fill all vacancies which may occur in said offices, and all constables shall enter into bond and security before said court. and in all other respects be governed by the existing laws now in force: *Provided*. That not more than one shall be elected for each township.

To give bond
and security.

Not more than
one for each
township.

Returns of
senatorial e.
lections, by

SEC. 4. *Be it further enacted*, That the judges and clerks of the several elections in each senatorial district shall make return of the senatorial elections within the

same to the clerk of the circuit court of the county first named in the law creating the district, and it shall be the duty of such clerk to furnish the person duly elected as senator for such district, with a certificate under his official seal, of his election; and when any vacancy shall happen in the office of senator, by death, resignation or removal, such vacancy shall be filled in the same manner as is by law provided in case of representatives; and when any election of senator or representative to the General Assembly shall be contested, the proceedings shall be regulated by the law now in force directing the manner in which the election of representatives shall be contested.

whom and
where made.

Vacancies,
how filled.

SEC. 5. *Be it further enacted,* That when the election of any sheriff or coroner shall be contested, it shall be before the circuit court of the county where such election shall have been held, and the person contesting such election shall give to the opposite party notice thereof in writing at least fifteen days before that term of the court at which such election shall be contested, which notice shall specify the grounds on which he intends to rely, and if any objection be made to the qualification of any voters, the names of such voters with the objection shall be stated in the notice, and the parties on application to the clerk of said court shall be entitled to compulsory process for witnesses, which shall be executed and returned in the same manner and such witnesses subject to like penalties as in other cases; or either party may (on giving sufficient notice thereof to the other) take depositions to be read in evidence on the trial, and said court shall at the first term thereof) if more than twenty days after such election shall have been held, and if less, then at the next term) in a summary way determine the same according to evidence.

Contested election of shff.
or coroner to
be before circuit court.

Notice to adverse party.

Attendance of
witnesses may
be enforced.

Depositions
may be taken.

SEC. 6. *Be it further enacted,* That every free white male citizen of the United States, who shall have attained the age of twenty-one years, and who shall have resided in this state one year before an election the last three months whereof shall have been in the county or district in which he offers to vote, shall be deemed a qualified elector of all elective offices: *Provided,* That no soldier, seaman or marine in the regular army of the United States shall be entitled to vote at any election in this state.

Qualifications
for voters.

Approved, 12th January, 1822.

CHAP. LXIII.

AN ACT regulating estrays.

Taker up of
estray horse
within 10 days
to take the
same before
justice of the
peace.

J. P. to issue
his warrant.

J. P. to record
appraisement,
and certify to
clk. city court.

Clk to record.

Taker up to
advertisewith
in 60 days.

Duty of taker
up of cattle,
sheep, hog or
goat.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri,* That every person who shall take up any stray horse, mare, mule or ass, shall within ten days thereafter, take the same before some justice of the peace of the county where such stray shall have been taken up, (provided the same shall not have been previously proved by the proper owners, and a tender made of the compensation hereinafter provided for,) and make oath before such justice that the same was taken up at his or her plantation, and that the marks or brands have not been altered by him or her (as the case may be) or any other person or persons to his or her knowledge; the justice shall then issue his warrant directed to a constable of his township, to summon three disinterested householders in the neighborhood (unless they can be otherwise had) causing them to come before him to appraise such estray, and after they, or any two of them, have been sworn to appraise such estray, without partiality, favor or affection, they shall forthwith proceed to appraise the same, which appraisement, together with the marks, brands, stature, color and age of such horse, mare, mule or ass, shall be entered in a book to be kept by such justice, and a copy of the same shall, within twenty days thereafter, be transmitted to the clerk of the county court of such county, which copy shall be under the hand and seal of such justice, and the clerk, on the reception of the same, shall record it in a book to be kept by him for that purpose, and deliver to the taker up a certified copy of it being duly recorded; and the said taker up shall, within sixty days thereafter, (provided the property has not been proven by the owner) cause the same to be published in a public newspaper printed in this state, and the person taking up such property shall pay to the clerk and justice such fees as has been heretofore allowed them for similar services.

SEC. 2. *Be it further enacted,* That any person who shall take up any head of neat cattle, sheep, hog or goat shall within ten days thereafter, unless it shall have been previously claimed and proven by the proper owner, and a tender made of the compensation hereinafter mentioned, cause the same to be viewed by some respectable householder of the county where the same shall have been taken up; and immediately go with such householder before a justice of said county, and make oath before said justice as is required in the taking up of an estray.

horse, and then such justice shall take from such householder, upon oath, a particular description of the marks, brands, color, and age of every such neat cattle, sheep, hog or goat, and such justice shall cause such estray or estrays to be appraised in like manner as is required to be done in the case of estray horse creatures, which description and valuation shall have the same proceedings as is required by the first section of this act in taking up of estray horse creatures, except that the taker up shall not be bound to publish the same in a public newspaper if the valuation does not exceed twenty dollars, but shall in all cases advertise the same in three of the most public places of his county.

Not to be advertised in newspaper, unless valuation exceeds 20 dollars.

SEC. 3. *Be it further enacted*, That as a reward for taking estrays, there shall be paid by the owner, for every horse, mare, mule or ass, above the age of two years old, the sum of one dollar; for every horse, mare, mule or ass, under the age of two years old, the sum of fifty cents; for every head of neat cattle, the sum of thirty seven cents; for every sheep or goat, twenty-five cents; and for every hog above six months old, ten cents, together with the fees paid by the taker up to the justice and clerk aforesaid, and the cost of publication, together with reasonable charges for keeping the same, which, in case the owner and taker up cannot agree, to be assessed by two disinterested householders, who shall be appointed by some justice of said county, and on failure of the claimant to satisfy such fees and charges as shall be assessed by the aforesaid householders, the estray or estrays, if a horse, mare, mule or ass, or neat cattle, shall be retained by the taker up for the space of two years, or if a hog, sheep or goat for the space of one year, at which time the said taker up shall have a complete title to said property, by paying into the county treasury of said county one half of the appraised value of such estray property.

Compensation to taker up of estrays.

Charge for keeping estrays to be assessed by two householders.

Claimant failing to pay charges, taker up may retain the estray, and have title thereto by paying half the appraised value.

SEC. 4. *Be it further enacted*, That if the said taker up shall not pay into the county treasury the aforesaid sum of money, he shall deliver up the property so taken up by him to the sheriff of said county, and on refusal so to do, it shall be the duty of the county clerk, on application being made to him, to issue his writ directed to the sheriff, commanding him to take said property, and in case of resistance of the said taker up, the sheriff may summon the posse comitatus and take the same by force.

Taker up failing to pay, to deliver property to sheriff.

Writ to issue to sheriff.

SEC. 5. *Be it further enacted*, That after the sheriff has gotten the estray property in his possession, it shall be his duty (by first giving ten days previous notice in three of the most public places of the county) to sell the same

Sheriff to advertise and sell property.

to the highest bidder, and shall after paying the amount due to the person who took up said property, which amount shall be assessed by the sheriff, and the sum of fifty cents to the clerk for issuing the writ together with the further sum of one dollar for his fees, and whatever the county court may allow him for keeping and selling the same, he shall pay the remainder, if any there be into the county treasury, (taking the treasurer's receipt therefor) which receipt he shall deliver to the county court at their next term, and it shall be the duty of said court to charge the treasurer with the amount, and the amount so paid in by the sheriff shall be appropriated for county purposes: *Nevertheless*, The former owner at any time within three years after taking, by proving his property before any county court or justice of the peace within the county where such estray is taken up in this state, and obtaining a certificate thereof from the clerk of said court to the treasurer, shall receive the balance aforesaid; and when any sheriff shall fail to pay any money for any stray sold agreeable to this act into the county treasury within three months after selling such estray or estrays, such sheriff shall forfeit and pay the sum of twenty dollars, together with the amount such estray sold for, to be recovered in any court having competent jurisdiction thereof.

To pay costs.
Remainder to be paid into city treasury.
Owner may prove property within 3 years.
Penalty on sheriff for failing to pay into county treasury.

SEC. 6. *Be it further enacted*, That if any stray taken up as aforesaid shall die or get away, before the owner shall claim his or her right, the taker up shall not be answerable for the same.

Estray dying, taker up not liable.
Penalty on taker up for removing estray out of this state

SEC. 7. *Be it further enacted*, That if any person shall trade or sell, or carry out of the limits of this state, any such stray or strays, before he, she or they are vested with right of property agreeable to this act for any purpose whatsoever, he, she or they, so offending shall forfeit and pay double the value thereof, to be recovered by any person or persons suing for the same in any court of record within this state having cognizance thereof, the one half to the informer and the other to the county.

Pounds to be made at court house, where estrays are to be kept on court days, if of the value of \$20 dollars.

SEC. 8. *Be it further enacted*, That the county court justices of each and every county in this state shall cause a pound to be made at or near the several court-houses, with a good and sufficient post and rail fence, gate, lock and key, where all estray horses, mares, mules and asses of the value of twenty dollars and upwards, taken up within twenty miles of the court house, shall be kept on the first day of every circuit court for three succeeding terms after the same is taken up, from eleven until three o'clock on each day, so that the owner may have an opportunity of claiming his, her or their property, and any

person taking up any such horse, mare, mule or ass, under the value of twenty dollars, shall not be compelled to exhibit such stray or estrays at the court house, but shall be governed in other respects as is directed in this act, and when any person taking up any stray horse, mare, mule or ass, residing more than twenty miles from the court house, he shall not be compelled to exhibit such stray or strays more than once in the pound, which shall be on the first day of the second term after taking up; and the justices of the county court of each county, failing to have such pound erected, shall forfeit and pay the sum of twenty dollars, and until such pound is directed no person shall be liable to any penalties for not exhibiting estrays; and the said justices shall appoint some fit person to take charge of the said pound, and keep the same in repair, whose duty it shall be to attend at the said pound on the several court days during the time such strays are to be exhibited therein, and the said justices shall make such reasonable allowance for the expence of erecting and keeping the said pound as to them shall seem proper, to be paid out of the county treasury in like manner and form that other county charges are liquidated and paid; and any person being appointed and undertaking the care of said pound, and failing to discharge his duty agreeably to the directions of this act, shall forfeit and pay the person injured the sum of five dollars for every such offence, with costs, recoverable before any justice of the county where such offence shall have been committed: *Provided*, That no stray pen shall be erected in any new county until the seat of justice is permanently established.

Penalty on justices of the county court for failing to have pound erected

Duties and compensation of keeper of the pound.

Penalty for neglect of duty.

SEC. 9. *Be it further enacted*, That all acts and parts of acts contrary to and repugnant to this act, be, and the same are hereby repealed. This act to take effect and be in force from and after the first day of March next.

Former acts repealed.

Approved, 12th January, 1822.

CHAP. LXIV.

AN ACT making appropriations for part of the year eighteen hundred and twenty one, and for the year eighteen hundred and twenty two.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That the following appropriations are hereby made, and shall be paid out of any monies in the treasury not otherwise appropriated; upon the warrants of the auditor of public accounts, to discharge the debts and demands due for the expenditures of this state for part of the year eighteen hundred and twenty one, and for the year eighteen hundred and twenty two, to wit: for

For governor and judges. the salaries of the governor, judges of the supreme and circuit courts and chancellor, the sum of eighteen thousand dollars; for the salaries of the secretary of state, auditor of public accounts, state treasurer, attorney general and circuit attorneys, the sum of three thousand seven hundred dollars; for the contingent expences of the office of secretary of state, a sum not exceeding six hundred dollars; for the salaries of the adjutant and quarter master generals, the sum of three hundred dollars; for the brigade inspectors and adjutants, the sum of twelve hundred and fifty dollars; for the pay of the members of the present general assembly, with the officers of both houses, a sum not exceeding eighteen thousand two hundred and fifty dollars; for copying and distributing the laws and journals of the present session, a sum not exceeding five hundred dollars; for public printing, a sum not exceeding two thousand dollars; and for the contingent expences of the present session, a sum not exceeding fifteen hundred dollars; to defray the expences of issuing additional loan office certificates, a sum not exceeding one thousand dollars; for printing general and regimental orders, eleven dollars, viz: to James O. Cummins, for publishing a general and regimental order, five dollars and fifty cents; to P. H. Ford, & Co. for like services, the like sum.

SEC. 2. *Be it further enacted*, That it shall be the duty of the speaker of the house of representatives to issue certificates in favor of the persons entitled thereto, for such sums as may have been allowed for the contingent expences of the house of representatives, attested by the clerk: and the president of the senate shall, in like manner, issue certificates for the contingent expences of the senate, attested by the secretary of the senate. and the auditor of public accounts shall draw his certificates on the treasurer therefor, who shall pay the same out of the monies hereby appropriated for that purpose.

SEC. 3. *Be it further enacted*, That there be allowed to William Christy, late auditor of public accounts, the sum of fifty three dollars, for printing done for his office to the use of the state.

Approved, 12th January, 1822.

CHAP. LXV.

AN ACT to provide for the appointment of a Public Printer.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That the Governor of this state, be:

and he is hereby authorized to appoint as printer to this Gov. to ap-
 state, until the next session of the General Assembly, point printer
 such person as will contract to do all printing which may
 be required for the state on the best and most reasonable
 terms, and the Governor is hereby authorized to contract
 with such person for the public printing aforesaid, and to
 take a bond of such person with such penalty, security and To take bond
 condition, as will secure the faithful performance of the with security
 contract, and the auditor of public accounts, shall audit
 and allow from time to time, the accounts of such printer
 for printing done as the Governor shall certify to be just,
 according to the contract, and issue his certificate on the
 treasurer therefor, who shall pay the same out of any mon-
 ey in the treasury not otherwise appropriated.

SEC. 2. *Be it further enacted,* That it shall be the duty 400 additional
 of the Governor to cause four hundred additional copies copies of the
 of the laws of the present session to be printed and dis- laws to be
 tributed according to the present regulation for distribu- printed.
 ting the laws, and that the secretary of state cause to be
 published in some newspaper printed in this state with-
 out delay, an act passed at the present session entitled,
 "an act establishing judicial districts and circuits, and Sec'y. of state
 prescribing the times and places of holding courts," and to cause cer-
 an act supplementary thereto, and also "an act supple- tain laws to
 mentary to an act pointing out the manner that execu- be published
 tions may be stayed and regulating the sale of property without delay!
 under execution."

Approved, 12th January, 1822.

CHAP. LXVI.

AN ACT concerning Executors and Administrators.

SECTION 1. *Be it enacted by the General Assembly of the*
State of Missouri, That it shall be the duty of the county County courts
 courts, in the several counties in this state in term time, and clerks may
 and of the clerks thereof in vacation, subject to the con- grant letters
 firmation or rejection of the court, to grant letters testa- testamentary
 mentary and of administration with or without any will and of admin-
 annexed. istration.

SEC. 2. *Be it further enacted,* That letters testameta- Where to be
 ry and of administration, shall be granted in the county granted:
 in which the mansion house or known place of abode of
 the testator or intestate is situated, or if he has no such
 mansion house or place of abode, and lands be devised
 in the will, or the intestate be possessed of lands, such
 letters shall be granted in the county in which the land
 lies or one of them if they lie in several counties; or if

the deceased had no such mansion house or place of abode, and no lands are devised by the will, or the intestate not possessed of any lands, such letters may be granted in the county in which the testator or intestate died, or where the greater part of his estate may be, and if he died out of the state, such letters may be granted in any county.

Who may act as executor or administrator. SEC. 3. *Be it further enacted,* That no person shall act as executor or administrator, unless he be twenty-one years of age or upwards.

Who entitled to administration.

Letters may be granted to creditor.

Persons entitled to administration may be cited to appear.

Power of ex'ors. over estate before proof of will

Ex'ors. refusing to qualify letters of administration to be granted.

SEC. 4. *Be it further enacted,* That letters of administration shall be granted to the representatives of the intestate who may apply for the same, and are duly qualified, preferring first the husband or wife, or such others as are entitled by law to a share in the distribution of the intestate's estate, or one or more of them as the court or clerk in vacation shall be of opinion, will best manage and improve the estate, and if no such person applies for such letters within sixty days after the death of the intestate, letters of administration may be granted to any creditor of the intestate, who shall apply for the same within ninety days next after the death of such intestate, and if no such application is made within that time, then to any person whom the court or clerk in vacation shall think will best manage and improve the estate, and it shall moreover be lawful for such court or clerk on the application of any person interested, to issue a citation to any person entitled to administration as aforesaid, calling on them to take out letters of administration, and if such person shall neglect to appear, and take out such letters within thirty days after the service of such citation, such neglect shall be considered as a renunciation of such person, to the administration; and in such case, and in all others where the person entitled to administration shall file his or her renunciation thereof in writing with the clerk of the county court of the proper county, letters of administration shall be granted to the person next entitled thereto.

SEC. 5. *Be it further enacted,* That the power of executors over their testators estate before probate of the will, shall be in no wise restrained, but shall remain as heretofore; and letters testamentary upon wills and testaments, whereof probate hath been duly made according to law, shall be granted to the persons therein appointed as executors or executrix, but if any person so named as executor or executrix shall refuse to take on himself or herself such executorship, such letters shall be granted to the other persons so named not renouncing as

aforesaid and not disqualified; but if all persons so appointed to execute such will, shall renounce the executorship as aforesaid, or be disqualified, letters of administration shall be granted to the person to whom administration would have been granted if there had been no will.

Sec. 6. *Be it further enacted,* That if at any time after letters of administration have been granted, a will of the deceased shall be produced, and probate thereof granted according to law, such letters of administration shall be revoked, and letters testamentary or of administration with the will annexed, granted in the same manner as if the former letters had not been obtained, and in all cases where letters testamentary or of administration shall be vacated, annulled or surrendered, letters of administration of the goods not administered with or without the will annexed, as the case may require, to the person to whom administration would have been granted, if the original letters had never been obtained, and the person whose letters are so vacated, annulled or surrendered, had renounced the administration.

Sec. 7. *Be it further enacted,* That if there be any contest about the validity of any will, or the executor be a minor, or absent from the state, letters of administration, during such contest, the minority or absence of the executor, may be granted, bond and security being taken as in other cases, with such variation in the condition as the case may require; or some person or persons shall be appointed by the proper county court or clerk in vacation, to collect and preserve the estate of the deceased, and make an inventory thereof; and such person or persons shall enter into bond with sufficient security for the collecting such estate, and making an inventory thereof, and the safe keeping and delivering up the same, when thereto required by the executor or administrator.

Sec. 8. *Be it further enacted,* That every person applying for letters of administration, shall before the same are granted, state upon oath, to the best of his or her knowledge; if there are any heirs or legal representatives of the intestate living, (and if any, state their names and places of residence,) which statement shall be in writing, and signed by the party making the same; and the person to whom administration is granted shall also take, before the court or clerk, an oath or affirmation that the deceased died without a will, as far as he knows and believes, and that he will well and truly administer all and singular the goods and chattels, rights and credits of the deceased, and pay his debts as far as the assets which may come to his hands will extend, and the law direct, and that he will

Letters of administration to be revoked on production of will.

Will contested, the executor, a minor or absent, letters of adm'n. to be granted

Or persons may be appointed to take care of estate.

To give security.

Applicant for adm'n. to make known the heirs, if any

Oath of adm'n.

Make a true and perfect inventory of all the goods and chattels, rights and credits, of the deceased; and to account for and pay over, according to law, all assets which shall come to his hands, possession or knowledge.

To give bond
and security.

Condition of
bond.

SEC. 9. *Be it further enacted*, That the court or clerk granting letters of administration of the estate of any person dying intestate, shall take of the person to whom they are granted, a bond, with two or more sufficient securities, resident in the county, to the governor or his successors in office, in such amount as the court or clerk shall deem sufficient, respect being had to the value of the estate, which bond shall be conditioned as follows: the condition of the above obligation is such, that if the above bounden A. B. administrator (or administratrix) of all and singular the goods, chattels, rights and credits of C. D. deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, rights and credits of the said deceased, which have or shall come to the hands, possession or knowledge of him the said A. B. or into the hands or possession of any persons for him; and the same so made do return and exhibit in the office of ———, for the county of ———, on or before the ——— day of ——— next, and all and singular the goods and chattels, rights and credits of the deceased, which shall come to the hands, possession or knowledge of the said A. B. shall well and truly administer according to law, and pay the debts of the deceased as far as his assets shall extend, and the law direct, and further make, or cause to be made, just and true accounts of his said administration, and make due and proper settlements thereof, from time to time, according to law, or the order, sentence or decree of any court having competent jurisdiction; and shall moreover well and truly do and perform all other matters and things, touching the said administration, as are or shall be prescribed by law, or enjoined on him by the order, sentence or decree of any court having competent jurisdiction, then this obligation to be void and of no effect, otherwise to remain in full force and effect.

Oath. of ex'or.
or adm'r. with
will annexed.

SEC. 10. *Be it further enacted*, That every executor and administrator with the will annexed, before letters testamentary or of administration granted, shall make oath that he will make a true and perfect inventory of all and singular, the goods and chattels, rights and credits of the testator, according to law, and will well and truly perform the last will and testament of the testator, by paying first his debts, and then the legacies contained in the said will, as far as the assets of the testator will ex-

and, or the law charge them, and that he will from time to time, render true and just accounts of his executorship or administration, according to law, and will faithfully perform all and singular such matters and things touching such executorship or administration as are or shall be required of him by law.

SEC. 11. *Be it further enacted*, That all executors or administrators with the will annexed, or of goods not administered, shall enter into bond with sufficient security, in the same manner as administrators of intestate estates, changing only such part of the form of the condition as the different circumstances may require.

To give bond and security.

SEC. 12. *Be it further enacted*, That in all cases where a will is proved, and letters thereon granted, and such will shall be afterwards set aside or disproved according to law, the letters granted thereon shall be revoked, annulled and vacated, and administration granted as if such will had never existed.

Will set aside, letters to be revoked.

SEC. 13. *Be it further enacted*, That all letters testamentary or of administration shall, before the same are delivered to the executor or administrator, be recorded by the clerk of the county court of the county in which they are granted, in a well bound book, to be by him kept for that purpose, and the said clerk shall certify on said letters that the same have been recorded according to law, and if such letters are not recorded as aforesaid, they shall not be received in evidence in any court of this state; and copies of letters recorded as aforesaid, under the seal of the office in which they are recorded, shall have the same effect as the original. And if any clerk shall deliver any letters testamentary or of administration without recording the same, he shall forfeit and pay double the damages which may be sustained by reason of such default.

Letters testamentary or of adm'n to be recorded by clerk.

Copies to be received in evidence.

Penalty on clk. for delivering letters before recorded.

SEC. 14. *Be it further enacted*, That letters testamentary and of administration, granted out of this state, being produced here under the seal of the court or office granting the same, shall be sufficient to enable the executor or administrator to bring their action in any court of this state, in as full a manner as if the same had been duly granted in this state.

Letters granted in other states.

SEC. 15. *Be it further enacted*, That it shall be the duty of every executor or administrator, immediately after receiving his letters, to collect, and take into possession, the goods, chattels, monies and effects, books, papers and evidences of debt of the testator or intestate, the wearing apparel of the widow and children (if any) only excepted, and make an inventory thereof, a duplicate of

Ex'or. or administrator to take charge of estate.

To make an inventory on oath.

To be filed with clk. of county court.

Estate to be appraised.

Appraisers to be sworn.

Duty of appraisers.

To file appraisal with clk.

○ Their compensation.

Inventories & appraisements to be made every six months.

which inventory, with the oath in writing of such executor or administrator, and by him subscribed, thereto annexed, stating that the same is a true and just statement and inventory of the goods, chattels, monies and effects, books, papers and evidences of debt of the testator or intestate, as far as he can ascertain them, the wearing apparel (if any) of the widow and children of the testator or intestate only excepted; shall be returned and filed in the office of the clerk of the county court of the proper county, within sixty days after administration granted, which oath shall be administered and attested by some judge or justice of the peace.

SEC. 16. *Be it further enacted*, That it shall be the duty of every executor or administrator, as soon as may be after he shall have collected the estate of the deceased, to cause the same to be appraised by three respectable disinterested householders of the neighborhood of the deceased, and not being of kin to any person interested, who, before entering upon their duties, shall be sworn before some judge or justice of the peace, that they are not interested, or of kin to any person interested in the estate as heirs at law; and that they will truly and justly, according to the best of their skill and abilities, view, appraise and value the slaves and other personal estate to them produced; which oath shall be in writing, signed by the said appraisers, and attested by the judge or justice of the peace administering the same. And such appraisers shall view, appraise and value such property, and make a list thereof, specifying therein each article appraised, and the value thereof, and the total amount of such appraisement, which list shall be signed and certified by such appraisers or any two of them; which appraisement so certified, and the oath aforesaid, shall be filed in the office of the clerk of the county court of the proper county, within sixty days after letters testamentary or administration granted, and each appraiser shall be entitled to one dollar per day for his attendance, to be paid out of the estate of the deceased, and it shall be the duty of every executor and administrator, once in every six months after the return of the first inventory, to make out in like manner inventories of all goods and chattels, monies and effects of the deceased, and not before accounted for, which may come to his hands, possession or knowledge, and cause the same to be appraised as aforesaid.

SEC. 17. *Be it further enacted*, That inventories and appraisements may be given in evidence in any suit by or against the executor or administrator, but shall not be conclusive for or against them, if other testimony be given.

en, that the estate was really worth or was bona fide sold for more or less than the appraised amount.

SEC. 18. *Be it further enacted*, That it shall be the duty of every executor or administrator, immediately after making the first inventory and appraisement as aforesaid, to cause an advertisement to be published in one or more of the public newspapers printed in this state, for at least three weeks, giving notice that letters testamentary or of administration have been obtained, and requiring all persons having claims against the deceased, to exhibit the same to such executor or administrator within twelve months after the date of such letters, or they may be precluded from having any benefit of such estate, and that if such claims are not exhibited within five years from the date of such letters, they will be forever barred.

Ex'or. or adm'r.
to advertise
for claims to
be exhibited.

SEC. 19. *Be it further enacted*, That in all cases where an intestate has left no known heirs or legal representatives, the administrator shall, in addition to the advertisement mentioned in the preceding section, cause a notice to be published in some newspaper printed in the state in which the intestate was born, if known, if not, then in one of the neighboring states or territories, and continue in the same for six weeks successively, containing the name of the intestate, and as near as may be a description of his person, together with a statement of the time and place of his death, his age and place of nativity if known, and the appraised amount of his estate.

Intestate hav-
ing no heirs,
duty of adm'r.
to advertise.

SEC. 20. *Be it further enacted*, That it shall be the duty of all executors and administrators, to prosecute and defend all actions which may have been commenced by or against the testator or intestate in his life time, which were pending at the time of his death, and which by law survive; he shall commence and prosecute all actions which may be necessary for the recovery of any debts due, or property belonging to his testator or intestate; and in all actions prosecuted or defended by him as executor or administrator, as aforesaid, he shall not be disqualified from being a witness as to facts occurring anterior to his qualification, on account of being such executor or administrator.

Duty of ex'ors
and adm'rs. to
prosecute and
defend suits
by or vs. de-
cedent.

May be wit-
nesses.

SEC. 21. *Be it further enacted*, That in all cases where there is a widow, she shall be allowed to keep as her absolute property her husband's wearing apparel, her cards, wheels, looms and other implements of industry all spun yarn, also all the cloth and cloathing made up in the family, by the said widow and family for their own use and also such property, goods, wares and furniture as said widow may think proper not to exceed the appraised val-

Privilege of
widow to re-
tain certain
articles.

And property
to the value

of \$150; giving her receipt therefor.

To be deducted from her dower.

Ex'or. or adm'r. to sell perishable estate.

To take bonds

May assign notes in pay't of decedent's debts.

Proviso.

Sales by ex'ors or adm'rs. clk. to be employed.

To be sworn.

of one hundred and fifty dollars, and the executor or administrator shall deliver to the widow the articles aforesaid, and take her receipt therefor and the amount thereof shall be allowed to such executor or administrator in his accounts, and such amount shall be deducted from the amount to which such widow may be entitled as dower in the personal estate of the deceased, if any remain to her after the payment of the just debts of the deceased.

SEC. 22. *Be it further enacted;* That every executor or administrator, whether it be necessary for the payment of debts or not, shall as soon as convenient after the return of the appraisement aforesaid, sell at public sale, all such goods of the testator or intestate, (not reserved by the widow as aforesaid) specific legacies excepted, as are liable to perish, be consumed or rendered worse by keeping, giving such credit as they shall judge best, and the circumstances of the estate will admit of taking bonds or promissory notes, with good security, of the purchasers; if such perishable goods be not sufficient for the paying of debts and expences the executor or administrator, shall proceed to sell the other personal estate, disposing of slaves last until the debts and legacies be all paid, taking bonds and notes with security as aforesaid having at all times due regard to specific legacies, and executors and administrators may assign the notes and bonds taken as aforesaid, in payment of debts or to legatees or distributees, entitled to the estate in discharge of the amount of such notes or bonds: *Provided,* That if any testator shall direct his estate not to be sold, the same shall be preserved accordingly, and it shall be sufficient, to return an inventory and appraisement only, unless such sale be necessary for the payment of debts.

SEC. 23. *Be it further enacted,* That in all sales of personal estate by an executor or administrator, he shall employ some competent person to act as clerk to such sale, who shall not be interested in the estate, and not of kin to any person interested, who shall attend the sale, and keep a just and true account of sales so made, and shall make out a list of sales, specifying particularly each article sold the price and the name of the person to whom sold, and the total amount of sales, and shall take and subscribe an oath annexed to such list, stating that he is not interested, in such sale, nor of kin to any person interested in the estate, and that the said list contains a true account of the sales made by such executor or administrator, at the time therein specified and the articles sold, the price and the name of the person to whom sold, which oath shall be taken before some judge or justice of the peace,

of the proper county, and the list so made and sworn to shall be returned by such executor or administrator, to the clerk of the county court of the proper county, within thirty days after the sale is completed, and such list of sale, shall be evidence in the same manner, and with like effect as inventories.

List of sales to be returned to clerk of county court.

SEC. 24. *Be it further enacted*, That it shall be lawful for all executors or administrators, under the direction of the county courts respectively to hire out slaves belonging to the estate of the testator or intestate, accounting for monies arising therefrom as in other cases.

Slaves may be hired out.

SEC. 25. *Be it further enacted*, That the sale and conveyance of lands and tenements to be sold in pursuance of a will, shall be made by the executors or such of them, as shall undertake the execution of the same, or by the surviving executors, or by the administrators with the will annexed, if no other person be appointed in such will for that purpose, or if the person so appointed shall refuse to perform the trust or die before he shall have completed the same.

Lands sold by direction of will, who to make deed.

SEC. 26. *Be it further enacted*, That if any testator shall be the owner of any lands and tenements at the time of his death, the sale of which is not provided for by his will, or any person shall die intestate being the owner of any such lands and tenements, and such testator or intestate shall not have sufficient personal estate and effects to pay his or her just debts, it shall and may be lawful for the executor or administrator, to apply to the circuit court of the county wherein such lands and tenements lie, by petition setting forth the facts, accompanied by a true and just account, verified by the oath or affirmation of such executor or administrator, of all the debts of the testator or intestate, which shall then have come to his knowledge, and the amount of assets in his hands, together with the inventory appraisement and list of sales, which court shall order and direct the sale or lease of such lands and tenements, or any part thereof, from time to time as they may think proper and necessary, for defraying the just debts of the deceased, and the court ordering such sale shall cause a sufficient number of advertisements to be made out, giving notice of the lands and tenements to be sold, and the time and place of sale, which notice shall be delivered to the sheriff of the county in which the lands lie, whose duty it shall be to put them up at the most public places in the county, at least twenty days before the time of sale, and the executor or administrator making such sale, shall make return of his proceedings in such sale to the circuit court.

Personal estate insufficient to pay debts, circuit court, on petition, may order real estate to be sold or leased.

Advertisements in case of sale.

Sheriff to put up notices.

Ex'or. or admr
to make re-
turn to court.

of the county in which the lands and tenements lie, at the next term after the sale together with an oath or affirmation, that such executor or administrator did not become a purchaser of such lands and tenements, or any part thereof himself, that they were not purchased for his use, and that he is in no wise interested in the purchase thereof, and such executor or administrator shall make, exe-

To make deed
to purchaser.

cute, acknowledge and deliver to the purchaser, a deed for the lands and tenements so sold, reciting the proceedings aforesaid, and conveying to such purchaser all the right, title and interest which the testator or intestate had, in and to the said lands and tenements at the time of his death, and the lands and tenements so sold and con-

Notice to be
given before
order is made.

veyed, shall not be liable in the hands of purchasers for the debts of the testator or intestate: *Provided*, That before such order of sale shall be made, the executor or administrator shall give notice of his intention to apply therefor, by publication in one or more public newspaper printed in this state at least six weeks before the application: *And provided also*, That no sale made by virtue of this section, shall in any manner effect the widows right of dower.

Sale not to ef-
fect widows
dower.

Contract in
writing by de-
ceased in his
life time for
conveyance of
real estate,
how to be ex-
ecuted.

Sec. 27. *Be it further enacted*, That when any testator or intestate, shall have entered into a contract in writing, in his life time, for the conveyance of any lands, tenements or hereditaments, which shall not have been executed and performed in his life time, and shall not have given power by will to carry the same into execution, it shall be lawful for the other party wishing a specific execution of such contract, to file his petition in the office of the clerk of the circuit court of the county in which the lands, tenements or hereditaments lie, setting forth the facts on which he relies for such specific execution, and praying a summons to issue, requiring the executor or administrator, to answer such petition, and such clerk shall issue a summons accordingly, returnable to the next term of the circuit court of such county, directed to the sheriff of the county in which the executor or administrator resides, which shall be served and returned as other writs of summons, and proceedings shall be had thereon as in other cases, and if it shall appear to the court that a decree for a specific execution of such contract ought to be made, they shall make such decree, upon such terms, as to them shall appear reasonable, saving to infants, married women, persons of unsound mind, and persons absent from the United States, the term of five years after their respective disabilities are removed, to appear and file their petitions, to set aside such decree

for fraud, collusion or other cause, on which petition proceedings shall be according to the practice of courts of chancery in like cases; and when any court shall decree the specific execution of any contract as aforesaid, the executor or administrator shall make, execute and deliver to the complainant, a deed in pursuance of such decree and acknowledge the same in open court, which deed shall be as effectual in law as if executed by the testator or intestate, saving the rights of infants, married women, persons of unsound mind or absent from the U. States as aforesaid, and all moneys or effects coming to the hands of any executor or administrator, by reason of such decree, shall be accounted for as other moneys and effects of the testator or intestate.

Sec. 28. *Be it further enacted*, That no executor or administrator shall be compelled to pay any debts of the deceased, until one year after taking letters testamentary or of administration, and if any person shall bring an action against any executor or administrator, within one year as aforesaid, such person although he may obtain judgment for the amount of his debt or demand, shall not recover any costs of suit, and no person shall take out an execution on such judgment within one year as aforesaid, nor shall any execution issue on any judgment obtained against the testator or intestate in his life time, in less than one year after granting administration as aforesaid, and in all cases where judgments are rendered against executors or administrators, to be levied on the goods and chattels, lands and tenements of the deceased, the judgment shall not be entered against the executor or administrator for costs of his own proper goods.

Ex'or or adm'r
not compelled
to pay debts
of dec'd. until
12 months af-
ter obtaining
letters.

Sec. 29. *Be it further enacted*, That all debts owing by any person at the time of his or her decease, shall be paid by his or her executors or administrators, as far as they have assets, in the manner following, to wit: First, funeral expences, and expences of the last sickness, servants wages, physic, and medical attendance during the last sickness of the deceased, debts due the state, judgments obtained against the deceased in his life time, and rendered not more than one year before the death of the deceased, unless where executions have been regularly taken out and continued to the time of the death of the deceased, and all other debts shall be paid without regard to the quality of the same, but if there shall not be assets enough to pay the privileged debts aforesaid, their funeral expences shall be first paid, and the other privileged debts paid in the order in which they stand arranged, as aforesaid, and if there be assets remaining after paying

Debts of dec'd
persons, how
to be paid.

the privileged debts; but not enough remaining to pay all other debts, then the said debts shall be paid *pro rata*, as far as the assets will extend, without regarding the quality, but no creditor who shall neglect to exhibit his account or demand duly authenticated to the executor or administrator, within one year after the administration granted, shall be entitled to receive any dividend until all demands exhibited within such time, be fully paid, and if there be assets remaining after the demands exhibited; within one year as aforesaid, are fully discharged, the same shall be applied to the discharge of such other demands as shall be exhibited within five years after the administration to be paid *pro rata*, or wholly if there be sufficient assets, and all debts and demands which shall not be exhibited within five years as aforesaid, shall be forever barred, saving however to married women, infants, persons of unsound mind, or imprisoned, the said term of five years after their respective disabilities are removed.

Creditors of
decd first to
apply to cty
court to have
their claims
proved and
allowed.

Court may de-
cide or refer
account to au-
ditor.

Either party
may have a
jury.

Subpoenas for
witnesses.

Costs to be
paid by party
vs. whom de-
cision is had.

SEC. 30. *Be it further enacted*, That any persons having any claims or demands against the estate of any deceased person, shall first apply to the county court of the county in which the letters testamentary or of administration were granted to have the same proved and allowed according to law, first giving the executor or administrator ten days previous notice in writing, of the nature and amount of such claim or demand, and in all such cases if neither party require a jury, or the demand shall not exceed twenty dollars, the county court may decide on the validity of such demand, or may refer the same to some disinterested and competent person as auditor whose report if approved by the court, shall have the same effect as the verdict of a jury, but if the demand exceed twenty dollars, and either party require a jury such jury shall be immediately summoned by the sheriff, and the trial be in a summary manner without the form of pleading; but either party may have a continuance until the next terms on good cause shewn, and each party shall have subpoenas for his witnesses, to be issued by the clerk, and shall be entitled to compulsory process to compel their attendance and commissions to take depositions, to be read in evidence as in trials at law; no claim or demand against any deceased person shall be allowed by the court, auditor or jury, unless the same be proved as fully and by the like evidence as is required in trials at law and the costs of all such trials shall be paid by the party against whom the decision is made, and such decision when the amount in controversy does not exceed twenty dollars, shall be final, but when the sum in dispute shall exceed twenty dollars;

and either party shall feel himself aggrieved by the decision of the county court, he may appeal therefrom to the circuit court of the proper county, the appellant making affidavit that he does not appeal for the purpose of delay or vexation, but because he believes himself aggrieved by the judgment or decision of the county court or the finding of the jury, and upon such affidavit being filed, and the costs of proceeding in the county court paid, such appeal shall be allowed, and it shall be the duty of the clerk of the county court to make out a transcript of the proceedings in said court and transmit the same with the original papers to the clerk of the circuit court of the proper county on or before the first day of the next succeeding term of the said circuit court and the clerk of the circuit court shall file said papers and transcript, and docket the same for trial as other cases, and the circuit court shall proceed therein on the merits *de novo*, give such judgment or decree as the county court ought to have given which shall be final and the clerk of the circuit court shall make out a transcript of the proceedings and decision of the circuit court, with costs to the clerk of the county court where the appeal was taken.

Appeal may
be had to circuit court.

Transcript of
proceedings
be transmitted
to clerk of
circuit court.

Sec. 31. *Be it further enacted*, That all executors and administrators shall exhibit accounts of their administration as far as they have administered, for settlement to the county court of the proper county, at the first term thereof, which shall happen after the expiration of one year from the dates of their letters testamentary, or of administration respectively, and in like manner at the corresponding term of the county court of such county, in every year thereafter, until the duties of their administration be fully completed, and it shall be the duty of the clerk of each county court to keep a docket in which shall be entered a list of all the executors and administrators who have not made final settlement of their accounts, the dates of their letters testamentary or of administration respectively, and the terms at which they are respectively required to make settlements of their accounts, according to the provisions of this act, and it shall moreover be the duty of the said clerks respectively to put up in their several offices at least thirty days before the commencement of any term, a list of the executors and administrators, whose accounts are required to be presented for settlement at the next term and keep such list affixed in some conspicuous place in their offices till the end of the term, for the inspection of all persons interested; and if any such clerk shall neglect or refuse to keep such docket, or to set up and to keep set up as aforesaid, any such list, he

Exors. and
adm'rs. to settle
accounts
annually.

Clk. of cty. ct.
to keep docket
of ex'ors. and
adm'rs.

And list put
up in his office.

Penalty for
neglect.

To issue citations to delinquent ex'ors and adm'rs.

May be fined unless good cause shewn.

Letters may be vacated.

County court to settle accts. of ex'ors. and adm'rs or may refer to auditor.

Pay of auditor

Duty of court or auditor in settling accts.

shall be fined by the court in any sum not exceeding fifty dollars at the discretion of the court for the use of the county: and if any executor or administrator shall neglect to present his accounts for settlement as aforesaid, it shall be the duty of the said clerk immediately to issue a citation to such executor or administrator requiring him to appear and exhibit his accounts for settlement, at the next term of the said court and shew cause why an attachment should not be issued against him for not exhibiting his accounts at the term at which he was required to settle as aforesaid, and if no cause be shewn to the contrary, such executor or administrator shall be fined by the county court in a sum not exceeding one hundred dollars at the discretion of the court for the use of the county, and such executor or administrator shall moreover be liable upon his administration bond for failing to settle as aforesaid, and the county court may moreover vacate the letters of such party for the second failure, and the county court shall have power to issue attachments and other necessary process, to compel such settlements, and in all cases the delinquent executor or administrator shall pay all costs.

Sec. 32. *Be it further enacted*, That it shall be the duty of the several county courts when any executor or administrator shall present any accounts to them for settlement, agreeably to the provisions of this act, to settle and audit the same, or they may appoint any judicious disinterested and competent person to settle the same, who shall be sworn well, truly and impartially to settle and adjust the accounts of such executor or administrator, to him referred according to law, and the best of his skill and judgment, whose report thereon if approved by the court shall be confirmed be and as effectual in law, as if made by the court, and such auditor shall be entitled as a full compensation to such sum as may be deemed reasonable by the county court, to be paid out of the estate so audited.

Sec. 33. *Be it further enacted*, That it shall be the duty of the county court or auditor, in settling or adjusting the accounts of any executor or administrator, to allow all reasonable charges for the expences of administration, funeral expences, and a reasonable compensation for the trouble of the executor or administrator according to law; and when any executor or administrator shall claim any allowance for disbursements by them made, they shall produce such proof of the existence of such demand as would be required to enable the person claiming it, to recover it in a suit at law, or that the same has been allowed and passed by the county court, as provided by the

thirtieth section of this act, and the said court and auditor are hereby respectively authorized to hear the evidence relating to any demands against any deceased persons estate, at the time of settling the accounts of executor or administrator, as aforesaid, and the like proceedings shall be had therein in every respect, as is provided in the said thirtieth section of this act.

Sec. 34. *Be it further enacted*, That upon each and every settlement of the accounts of any executor or administrator, as is provided in this act, it shall be the duty of the court or auditor, to ascertain the whole amount of monies which shall have come to the hands of such executor or administrator, and belonging to the estate of the deceased, or shall have been actually received upon the sale or hire of any of the estate of the said deceased, or collected on debts due the estate, and the whole amount of debts exhibited against such estate according to law; and if there be not sufficient to pay the whole of the debts and expences of administration, the monies remaining after paying expences as aforesaid, shall be apportioned among the several creditors, agreeably to the provisions of the twenty-ninth section of this act, and thereupon the court shall make an order, that such executor or administrator shall pay the claims which have been allowed by said court, according to such apportionment, reserving the apportionment made on claims which have been duly exhibited, the validity of which remains undecided, until a decision thereon: and the said courts, upon each and every settlement, shall proceed in like manner until the whole debts are paid, or the assets exhausted, and if on any such settlement there shall be money enough to satisfy all demands duly exhibited against such estate, the court shall order the whole to be paid, except such as remain undecided, and in any case of reservations on account of undecided claims, if any such claim shall be determined in favor of the applicant, the apportionment or the whole shall be paid (as the case may be) in the same manner as if such claim had been originally allowed, but if it be determined against the applicant, it shall be accounted for as other monies: and it shall be lawful for any creditor whose claim has been allowed, and ordered to be paid, either in whole or in part, to take execution out of the office of the clerk of the county court, for the part so allotted to him with costs, unless there be an appeal, or the executor or administrator shall pay the same within ten days after the end of the term in which such order is made.

At each settlement, court to apportion among creditors the amount of assets in the hands of executor or adm'r.

If assets sufficient, court to order the payment of all debts.

Creditor whose claim has been allowed may issue execution.

Sec. 35. *Be it further enacted*, That it shall be lawful

County court
may order
sale of person-
al estate.

for the county court, from time to time, as often as may be necessary for the payment of debts, legacies or distributions, to make such order for the speedy collection of the debts due the deceased, and sale of personal estate, as to them shall seem proper, and if necessary, to order the proper steps to be taken to procure the sale of real estate, and enforce obedience of such orders by attachment against such executor or administrator or otherwise.

Ex'ors. and
adm'rs. when
to pay legacies
and make dis-
tribution.

Sec. 36. *Be it further enacted*, That executors and administrators shall not be compelled to make distribution, or pay legacies, until one year after the date of the letters testamentary or of administration, unless the legacies specified be such kind of property as would be perishable, or subject to injury, if retained one year; nor shall any executor or administrator be compelled to pay legacies, or make distribution, at any time within five years after the date of the letters aforesaid, unless ordered so to do by the court, until bond and security be given by the distributee or legatee to refund the due proportion of any debt, which may afterwards appear against the estate, and the costs attending the recovery thereof, if exhibited within five years as aforesaid, and such bonds shall be for the indemnity of such executor or administrator: *Provided*, That the widow shall not be bound to give such bond before she receives the property to be delivered to her according to the provisions of the twenty-first section of this act.

Indemnifying
bonds.

Cty. court may
order sale of
personal prop-
erty when e-
qual division
cannot be
made.

Sec. 37. *Be it further enacted*, That when slaves, or other personal property of any person dying intestate, shall descend, and an equal division thereof cannot be had in kind, it shall be lawful for the county court of the proper county, on the application of any person interested, to direct the sale of such slaves, or other personal property, and cause the money arising therefrom to be distributed according to the rights of each person entitled to distribution: *Provided*, That each person entitled to distribution shall be duly notified in writing of such application ten days at least before such order shall be made.

After payment
of debts, lega-
cies to be paid
and distribu-
tion made.

Sec. 38. *Be it further enacted*, That if upon any settlement it shall appear that there are sufficient monies to satisfy all the demands against the estate, the court shall proceed to order the payment of legacies, and distribution of shares, in the same manner as in the case of debts, except that specific legacies shall be first satisfied, and the payment of such legacies and distributive shares shall be enforced by attachment or execution, as the case may require.

SEC. 39. *Be it further enacted,* That if at any time after the payment of legacies or distributive shares, it shall become necessary that the same should be refunded, in whole or in part, for the payment of debts, it shall be the duty of the county court, on the application of the executor or administrator, to apportion the same among the several legatees or distributees, according to the amount received by them, except specific legacies, which shall not be required to be refunded, unless the residue be not sufficient to satisfy such debts; and if any distributee or legatee shall refuse to refund, according to such order or decree, the court shall, on motion of the executor or administrator, ten days previous notice in writing of such motion having been given to the legatee or distributee, enter judgment for the amount apportioned to him, with costs, and issue execution therefor: *Provided,* That either party may have an appeal to the circuit court, on entering into bond with sufficient security, for the payment of the condemnation in money, and costs, if he fail to prosecute his appeal with effect, and the proceeding shall thereupon be certified to the circuit court, who shall proceed thereon as in cases of appeals from justices of the peace.

Legatees and distributees required to refund.

Cty. court to apportion.

On refusal to refund, the court on motion to enter judgment.

SEC. 40. *Be it further enacted,* That in all cases where there are no known heirs or legal representatives, it shall be the duty of the administrator to make sale of all the personal estate of the deceased, whether the same be necessary for the payment of debts or not, if no heirs or legal representatives appear within two years after the publication of an advertisement, pursuant to the nineteenth section of this act.

Heirs not appearing within two years, sale of all the personal estate to be made.

SEC. 41. *Be it further enacted,* That it shall be the duty of all administrators, where there are no known heirs or legal representatives, under the direction of the county court of the county in which such lands lie, to lease such real estate from year to year, until five years after the publication of the notice mentioned in the nineteenth section of this act shall have expired, or until an heir or legal representative appear, but if no such person appear within the said five years, then it shall be the duty of such administrator to apply to the circuit court of the county in which such lands lie for an order of sale, by petition, setting forth the facts, accompanied by an authentic copy of his letters of administration, and a copy of the notice required to be published by the nineteenth section of this act, together with a certificate of the court from whence such letters of administration issued, under the seal of the court, certifying that no heir or legal rep-

Lands to be leased out for five years.

If no heir appear, court to order a sale of real estate.

Adm'r to advertise.

To allow a credit of 12 months.

To make a deed.

Not to be interested in purchase.

Adm'r. in case there be no heirs, to pay assets into state treasury.

Treasurer to give duplicate receipts.

Adm'r. to receive credit for such payment.

representative has appeared to claim such estate, and the said court shall thereupon order a sale of such real estate to be made at public sale, to the highest bidder, on some day of the next succeeding term of the said court, at the court house door, after the said administrator having advertised the same in some public newspaper printed in this state, and nearest the place of sale, for at least four weeks next preceding the day of sale; and upon the sale of such estate as aforesaid, it shall be the duty of said administrator to give a credit to the purchaser for one year, on his giving bond with security, to be approved by the administrator, for the payment of the purchase money; and he shall moreover execute to the purchaser a deed, conveying all the right, title and interest which the intestate had in and to said estate, which shall be acknowledged before the circuit court of the county in which such lands lie, and shall make oath that he is neither directly nor indirectly interested in the purchase of said lands or tenements, or any part thereof, nor has the same been purchased for his benefit or use.

Sec. 42. *Be it further enacted*, That it shall be the duty of all administrators, where there are no known heirs or legal representatives, in their settlements with the county courts, to account for all monies which shall come to his hands as administrator as aforesaid; and if there be more than sufficient to pay the debts of the deceased, and the expences of administration, according to the provisions of this act, it shall be the duty of the county court, on each settlement, to ascertain the amount so remaining in the hands of such administrator, and certify the same to the auditor of public accounts, who shall charge such administrator therewith, and to the circuit attorney or attorney general prosecuting for the district; and it shall be the duty of such administrator to pay such balance into the treasury of the state, within ninety days after the settlement of his accounts as aforesaid, and if he shall so pay the same it shall be the duty of the treasurer to grant him duplicate receipts therefor, one of which he shall deliver to the auditor of public accounts, who shall charge the treasurer with the amount, and grant to the administrator a certificate thereof, and credit him with the amount so paid into the treasury, and on producing the auditor's certificate to the county court they shall credit such administrator with the amount; but if he shall not pay such balance into the treasury as aforesaid, it shall be the duty of the attorney general or circuit attorney of the district, to move the county court to enter judgment against such administrator for such balance, and five per

centum per month thereon, from the time such balance was ascertained, until the rendition of the judgment, giving to such administrator ten days previous notice of such motion; and it shall be the duty of the such county court to enter judgment accordingly, and issue execution therefor, and the like proceedings shall be had on each subsequent settlement.

Failing to pay, cty. et to enter judgment against him.

SEC. 43. *Be it further enacted*, That it shall be the duty of the auditor of public accounts, when any monies are paid into the state treasury, by virtue of the preceding section, to credit the estate of the deceased with the amount; and if any heir or legal representative of the intestate, shall appear within ten years after the publication of the notice required by the nineteenth section of this act, and produce legal proof of his or her right to claim such estate, or any part thereof, to the court out of which the letters of administration issued, such court shall grant him a certificate thereof, and the proportion to which he is entitled, and on such certificate being filed with the auditor of public accounts, such auditor shall grant him a certificate thereof, and the amount shall be paid by the treasurer accordingly; but if no such heirs or legal representatives appear within the time aforesaid, they shall be barred from receiving any part of said estate, or the proceeds thereof, saving however to infants, married women, persons of unsound mind, and persons beyond the limits of the United States, and territories, the aforesaid, ten years after their respective disabilities are removed, to prove their respective claims aforesaid.

Auditor to credit estate of dec'd with amount paid.

Heirs appearing within ten years.

To receive estate.

SEC. 44. *Be it further enacted*, That when any executor or administrator shall wish to make a final settlement of his executorship or administration he shall cause an advertisement to be published in some newspaper in the county in which administration was granted, for two months successively, notifying all creditors, legatees and others concerned in said estate, that he intends to make such final settlement at the next term of the county court, or if no such paper be printed in the county, then such notice shall be given by advertisements set up in six of the most public places in the county, two months at least before the commencement of the term; and in either case a copy of such advertisement shall be set up in the office of the clerk of the county, two months before the term; and if it shall appear to such court that such notices were duly published or set up, as aforesaid, and that the estate of the deceased has been fully administered, such court shall make such final settlement, which shall be conducted in the same manner in all respects as annual

Notice of final settlement to be published in newspaper.

Copy of advertisement to be set up in clerk's office.

settlements, and such executor or administrator shall not thereafter be required to make annual settlements.

Ex'ors and adm'r's. to give receipts.

SEC. 45. *Be it further enacted,* That it shall be lawful for all executors and administrators to give receipts, acquittances and discharges, for the amount of all monies which may be received by them on account of the estate of the testator or intestate: *Provided,* That if there be more than one executor or administrator, a majority shall join in such receipts, acquittances or discharges, otherwise they shall be of no effect.

If more than one, majority to join in the receipt.

Compensation to ex'ors. and adm'r's.

SEC. 46. *Be it further enacted,* That executors and administrators shall be allowed, as a compensation for their personal trouble, a sum not exceeding six per centum upon the whole amount of the personal estate, and not exceeding two per centum on the money arising on the sale of lands, with such additional allowance for hiring out slaves, and collecting and preserving the estate, as the county court shall deem reasonable.

Devasavit suggested by creditor, court to direct an issue of fact.

SEC. 47. *Be it further enacted,* That if upon the settlement of any account of any executor or administrator, it shall appear that there are not sufficient assets to satisfy the whole of the demands against the estate, and any creditor will suggest that such executor or administrator has not made a just and true account of the assets in his hands, and pray an enquiry into the same, the court shall direct an issue of fact to be made up, whether there is waste or not, which shall be tried as in cases of demands against the estate, and if no waste be found, the creditor making the suggestion shall pay the costs, but if waste be found, then judgment shall be rendered in favor of such creditor against such executor or administrator, of his own proper goods and chattels, lands and tenements, for the amount found to be wasted, with costs of suit, and execution be issued accordingly, and the money when collected shall be apportioned among the respective creditors.

Judgment vs. ex'or. or adm'r in case of waste.

After final settlement and estate represented as insolvent.

SEC. 48. *Be it further enacted,* That if after final settlement by any executor or administrator, of his administration of any estate, which shall by such settlement be found to be insolvent, any creditor or other person interested, shall bring an action of waste against such executor or administrator, and shall prove any waste or mismanagement of the estate of the deceased, at any time, by the executor or administrator, he shall have judgment against such executor or administrator for so much of the whole assets wasted or mismanaged, as he would have drawn, if they had been regularly accounted for, with costs of suit, and have execution thereof of the proper goods and chattels, lands and tenements of such executor or admin-

Creditor suing and proving waste, to recover vs. ex'or or adm'r.

istrator; and the settlements of such executor or administrator shall only be conclusive, so far as he shall have applied the assets pursuant to the apportionment made by the courts for paying debts.

SEC. 49. *Be it further enacted*, That the bond given by any executor or administrator may be put in suit and prosecuted from time to time at the suit of any party injured, in the name of the Governor of the State, to the use of such party for waste or other mismanagement of the estate, or other breach of the condition of such bond, and the damages shall be assessed thereon as on bonds with collateral conditions; but no security in any such bond shall be charged beyond the assets of the testator or intestate, by reason of any omission or mistake in pleading or false pleading of any executor or administrator, and the clerks of the county courts respectively shall give to any person who may request the same on payment of legal fees, a true copy of any such bond, which copy certified by the clerk with the seal of the court annexed shall be sufficient evidence in any action brought on such bond.

Bond of ex'or.
or adm'r may
be put in suit

Securities not
bound beyond
assets of estate

SEC. 50. *Be it further enacted*, That when any legatee, creditor, or person interested in any estate, or the security of any executor or administrator shall declare on oath or affirmation, that he or she hath sufficient cause to believe, that the sureties in any executors or administrators bond are likely to become insolvent, the county court out of which the letters testamentary or administration issued, on application supported by oath as aforesaid, shall examine into the cause of complaint, and if they find it just, they shall order such executor or administrator to give such further security as they may think necessary, amounting to the value of the estate, which, if given, shall be taken in the same manner as the original bond; but if such executor or administrator shall refuse or neglect to give such bond and security within thirty days after due notice of such order, the court shall vacate his letters, and grant new letters to such person or persons, and upon such security, as the court shall think proper.

County courts
may require
ex'ors. or adm-
n's. to give
further security.

On failure, let-
ters to be vac-
ated.

SEC. 51. *Be it further enacted*, That if any executor or administrator shall wish to resign or surrender his executorship or administration, he shall give notice of his intention to apply to the county court, in the same manner as is required in case of final settlement; and if the court on due proof of such notice, and on examination of the causes why such executor or administrator wishes to resign or surrender his letters as aforesaid, shall be of opinion that he ought to be allowed to do so, they shall

Ex'or. or adm'r
may resign or
surrender his
letters.

make an order to that effect, and grant letters of administration of the goods not administered, as in case of the death of such executor or administrator; and the executor or administrator so resigning shall surrender his letters.

To account
with his suc-
cessor.

SEC. 52. *Be it further enacted*, That whenever any letters testamentary or of administration shall be annulled, vacated or surrendered, according to the provisions of this act, the court shall order the former executor or administrator to deliver over and pay to his successor, all and singular the monies, goods and chattels, rights and credits, titles, deeds, evidences and securities, books and papers, which were of the deceased, and come to his hands and remained unadministered, and to account to the said successor for all and every the goods, chattels, rights and credits which shall have been previously administered, and pay over the balance which shall remain due from him to his said successor, in such manner and at such time as the court shall award and order, upon examination and confirmation of such account, to be had according to the course of proceeding by this act prescribed in cases of the settlements of executors and administrators in said court; and if any such superceded executor or administrator shall neglect or refuse to comply with such award and order, the court on motion shall proceed against him by attachment, or the succeeding administrator may proceed at law against him and his securities, or either of them, if any there be, or against any other person being possessed of any of the estate of the deceased, or both remedies may be prosecuted at the same time, until the end be fully attained: *Provided*, That no such suit shall be instituted against any security, unless the same be commenced within seven years after the vacating or surrendering the letters testamentary or of administration, and the whole amount of money recovered against such security, shall not exceed the penalty of his bond.

On failure,
court to pro-
ceed against
him by attach-
ment or suc-
cessors at law.

Power of city
court to pun-
ish for con-
tempt.

SEC. 53. *Be it further enacted*, That the county courts shall have power, for any disobedience of any order, sentence or decree by them made in pursuance of this act, by any executor or administrator, to issue attachments as for contempt, to imprison the body, or proceed by sequestration of lands and goods, as fully as any court of chancery may or can do.

Appeal to cir-
cuit court.

SEC. 54. *Be it further enacted*, That if any person shall feel himself aggrieved by any definitive judgment, sentence, order or decree of any county court, with respect to any matter relating to the administration of any es-

late, it shall be lawful for them to appeal to the circuit court, upon bond and security given, as in cases of appeals from a justice of the peace to the circuit court, unless otherwise hereinbefore provided for, and such appeal shall be a supercedeas to all further proceedings in the county court. To be a supercedeas.

SEC. 55. *Be it further enacted*, That in all cases of executors and administrators in which there has not been a final settlement before the taking effect of this act, the county court shall proceed to cause settlements to be made, and the administration completed, according to the provisions of this act without delay; and in all cases of estates where there are no known heirs or legal representatives, it shall be the duty of the attorney general, and circuit attorneys in their respective districts, to cause proceedings to be instituted for the recovery of all monies which may have accrued to this state, or the late territory of Missouri. Future settlements to be made according to this act. Duty of atty. genl. and circuit attys. to institute proceedings where there are no heirs.

SEC. 56. *Be it further enacted*, That justices of the peace shall have jurisdiction in suits in favor of executors or administrators, when the sum demanded shall not exceed ninety dollars: *Provided*, That if upon the trial a balance shall be found against the executor or administrator, the justice shall not give judgment for such balance, but shall certify his proceedings to the next county court, who shall proceed to try and determine the same, and the costs in the court below shall follow the judgment in the county court, and shall be collected with the said judgment. Jurisdiction of justices of the peace in cases of ex'ors. and adm'rs.

SEC. 57. *Be it further enacted*, That all acts and parts of acts, coming within the perview of this act, shall be, and the same are hereby repealed: *Provided*, That all proceedings commenced by virtue of any act hereby repealed, shall be as valid to all intents and purposes, as if this act had not passed, and shall be continued and conducted hereafter according to the provisions of this act. Former acts repealed.

Approved, 12th January, 1822.

CHAP. LXVII.

AN ACT for the relief of the securities of John W. Thompson, late sheriff of St. Louis county.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri*, That the auditor of public accounts be and he is hereby authorised and required to adjust and settle the accounts of John W. Thompson, deceased, late sheriff and collector of St. Louis county, upon principles of justice and equity, in which settlement all items, Auditor of public accounts to settle the accounts of John W. Thompson.

of debit and credit shall be applied to the accounts of the year in which they respectively occurred.

Auditor to allow certain credits.

SEC. 2. *Be it further enacted*, That in the settlement to be made as aforesaid, the said auditor shall credit the accounts of the said John W. Thompson with the following sums, to wit: two hundred and seventy dollars, for eighteen licenses heretofore charged to him and returned; three hundred and ninety six dollars thirty six cents, the amount of the treasurers receipt dated the first day of October, eighteen hundred and thirteen; five hundred and eighty nine dollars and two cents, for the amount of the treasurers receipt dated the first day of April, eighteen hundred and fourteen; thirty six dollars and ten cents, for three certificates of the clerk of the superior court for attendance in criminal cases; three hundred and fifty dollars, for making assessments in St. Louis county for the year eighteen hundred and eighteen; and such amount for delinquencies as shall be ascertained in the manner hereinafter directed, and such further allowances as shall appear to be equitable and just: *Provided*, That no credits shall be allowed which may have been heretofore allowed.

Stuart and A. V. Carr to make out and exhibit to city court of St. Louis city list of taxes uncollected.

SEC. 3. *Be it further enacted*, That Charles Stuart and Anthony V. Carr, late the deputies of the said John W. Thompson, or either of them, shall be and they are hereby authorized to make out and exhibit to the county court of St. Louis county, a list of all territorial taxes payable by law, and by whom due, for which the said Thompson stands charged, which taxes could not be collected after due diligence used by said Thompson; and the said Stuart and Carr, or either of them, may make out the said list in the same manner as the said Thompson might originally have done; and the said county court shall adjust and ascertain the amount of such delinquencies, according to the laws in force at the time they respectively occurred, and cause the amount for each year separately to be certified to the auditor of public accounts, who shall credit the same as aforesaid.

City court to certify to auditor.

To settle his account with county.

SEC. 4. *Be it further enacted*, That the county court of the county of St. Louis shall be, and they are hereby authorized and required to adjust and settle the accounts of John W. Thompson, deceased, late sheriff and collector of the county of St. Louis, with the said county, upon principles of equity and justice, and apply the items of debit and credit to the accounts of the year in which they respectively occurred, keeping the accounts of sheriff and collector separate and distinct from each other; and if there be any balance in favor of said Thompson in ei-

ther account, it shall be applied to his credit on the other.

SEC. 5. *Be it further enacted*, That the said county court, in making the settlement aforesaid, shall credit the accounts of the said John W. Thompson the following sums, to wit: three thousand dollars on account of the jail tax, being so much paid on the drafts of the commissioners for building the jail in said county; eighty one dollars and fifty cents for clerks certificates for paupers; seven dollars for certificates in favor of M. P. Leduc; four dollars paid J. Watson for standing guard at the jail; twelve dollars and fifty cents, the amount paid to sundry persons on certificates for killing wolves and wild cats, and ten per centum on the total amount of the said several sums aforesaid; and the further sum of one hundred and fourteen dollars and ninety six cents, being ten per cent. on money paid on settlement with the circuit court of St. Louis county, the third day of November eighteen hundred and eighteen; and the said county court shall make such further allowances for delinquencies in relation to the county taxes as shall be ascertained upon lists made out by Charles Stuart and Anthony V. Carr, and adjusted in the same manner as provided in the third section of this act in relation to territorial taxes, and shall also allow and credit to the accounts of said Thompson, such other and further sums as shall appear just and equitable: *Provided*, That no credits shall be allowed which have been heretofore allowed.

SEC. 6. *Be it further enacted*, That there be released to the legal representatives of the said John W. Thompson, and his securities, the whole amount of fines of twenty per centum which have been charged on the auditor's books against him: and the securities of the said John W. Thompson are hereby authorized to collect all arrears of taxes due from any person now residing in St. Louis county, and which ought to have been paid to the said John W. Thompson, within the time for which his securities were bound for his performance; and if after such collection and final settlement there should remain a balance in the hands of the securities, in favor of the said John W. Thompson, it shall be their duty to pay the same to the legal representatives of the said John W. Thompson. This act shall take effect and be in force from and after the passage thereof.

To allow certain credits.
20 p. centum released

Securities authorized to collect the taxes remaining unpaid.

II. S. GEYER,

Speaker of the House of Representatives

WM. H. ASHLEY,

President of the Senate.

This bill having been returned by the Governor, with his objections thereto, and after reconsideration having passed both houses by the constitutional majority, it has become a law, this fourth day of January, eighteen hundred and twenty two.

H. S. GEYER, *Speaker of the House of Representatives*,
WM. H. ASHLEY, *President of the Senate*.

WHEREAS it appears to this General Assembly, that divers good citizens of this state, several years since associated themselves together, and proceeded about one hundred and twenty miles up the Gasconade river for the purpose of erecting saw-mills in the extensive pineries, to be found in those regions, which at great expence, risk and personal privation, they at length effected. That their mills were erected and their improvements made subsequent to the period at which the act of Congress gave to actual settlers on public land, the right of pre-emption to lands on which their improvements were made; and that under the existing laws of the United States they are liable to be driven from their homes, property and employment, and deprived at once of the hard earnings of their labor for several years, to the utter ruin and destruction of themselves and families, Therefore

Resolved, by the General Assembly of the State of Missouri, That our Senators and Representative in Congress, be requested to use their influence to procure the passage of a law, to extend to all the actual settlers on the Upper Gasconade, the right of pre-emption, who may have erected saw-mills, on lands of the United States, and have actually heretofore had the same in complete operation.

Resolved, That the Governor of this state be requested to cause to be transmitted to each of our Senators and Representative in Congress; a copy of the foregoing resolution and preamble.

Approved, 29th December, 1821.

WHEREAS in many townships in this state, the sixteenth section, or a part thereof is held by pre-emption, and other lands have not been appropriated in lieu thereof to the use of schools agreeable to the provisions of an act of Congress in such case made and provided.

Resolved, by the General Assembly of the State of Missouri, That the Governor of this state be requested to procure the location of other lands for the use of schools in lieu of the sixteenth section or such part thereof as

may be held by right of pre-emption agreeably to an act of Congress in such case made and provided, approved March 3d, 1819.

Resolved also, That the Governor of this state be, and he is hereby requested to solicit of the President of the United States, and also of the Secretary of the Treasury, permission to appoint an agent to select for this state the land granted for the use of a seminary of learning within this state, and if such permission be obtained, that he appoint some fit person to make such selection as soon as may be, and that the person so appointed shall be allowed three dollars per day, to be paid out of any monies in the treasury, not otherwise appropriated: *Provided*, such allowance shall not exceed the sum of three hundred dollars, and the auditor of public accounts shall audit his account and draw an order upon the treasurer accordingly.

Resolved, That our senators and representative in Congress, be requested to use their influence in effecting the objects contemplated by these resolutions.

Approved, 8th January, 1822.

Memorial to Congress relative to persons entitled to rights of pre-emption, within this state.

To the Senate and House of Representatives, of the United States in Congress assembled.

The General Assembly of the State of Missouri would respectfully represent that before the late war, many of the citizens of this state encouraged by the known policy of the Spanish government, and others by a laudable anxiety to become the proprietors of the soil in which they labored, were induced to make settlements on lands which are now the property of the United States. The same love of liberty and of country which enabled them to subdue the forest and to bear the privations of a frontier settlement prompted them to face a savage and murderous foe, and presented a barrier in this country which neither British policy nor Indian warfare could penetrate or remove. The Congress of the United States governed by true principles of policy and of justice, granted the right of pre-emption to such settlers, many of whom feeling a confidence in the government and secure in their homes, have expended much more than the first value of the lands in making valuable and lasting improvements thereon; in some cases the money received for their services in the field of battle has been reserved to purchase the land endeared by kind associations with neighbors who have suffered the same privations, the same anxiety

and toil, which has depreciated in their possession, and in some districts the sale of public lands has been so long delayed, and more especially in the Jackson Land-Office District, the same distress which pervades the other western states, together with the failure of the Bank of Missouri, has prevented many who under other circumstances could have paid for their land, from doing so now. This general pressure caused the Congress at the last session to pass a law granting further indulgence and the privilege of making payments in instalments of less sums, to other purchasers of public lands. Your memorialists confiding in the justice and liberality of your honorable body, do respectfully ask you to extend to persons in this state entitled to the right of pre-emption, all the indulgence and the privilege of making payment for the lands improved by them in the same manner as allowed to other purchasers of public lands by the law of last session, and that instructions may be given to the registers and receivers of the different land office districts to determine upon all claims to the right of pre-emption within this state as speedily as possible, and as in duty bound they will ever, &c.

Resolved, That the Governor be requested to forward to each of our senators and representative in Congress a copy of the foregoing memorial.

Approved, 9th January, 1822.

To the Senate and House of Representatives of the United States of America in Congress assembled.

The General Assembly of the state of Missouri beg leave to represent to your honorable body, that by an act passed at the first session of the sixteenth Congress entitled "an act to authorise the people of the Missouri territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories," five per centum of the nett proceeds of the sale of lands lying within said territory or state, after deducting all expenses incident to the same, was reserved for making public roads and canals, of which three fifths shall be applied for those objects within the state, under the direction of the Legislature thereof, and the remaining two fifths in defraying, under the direction of Congress, the expences to be incurred in making of a road or roads, canal or canals, leading to said state.

This liberal and enlightened policy of the general government is highly and justly appreciated by your memorialists. To all countries roads and canals are objects of

primary importance to the United States, from the extent of her territory and the immense maritime coast she presents, they will form the ligaments which are to bind and indissolubly knit together the members of the federal compact, and preserve that community of intercourse so essentially necessary to the concentrating and consolidating of her energies in time of war. Your memorialists cannot but view with satisfaction the arduous and commendable exertions of many of the states of this Union in the forwarding this great national object, and looking with anxious solicitude at the situation and extent of this state, with a population spread over an immense surface of country, they sensibly feel the importance of carrying into effect the objects of the act referred to.

Your memorialists forbear entering into an investigation of the merits of this question, trusting that they will appear manifest and imposing to your honorable body, and therefore pray you that an act may be passed, directing the receivers of the different land offices in this state to pay over to the state treasurer, the nett proceeds of the three fifths of the five per centum of all sales of public lands made subsequent to the nineteenth of July, eighteen hundred and twenty.

Resolved, That the Governor be requested to forward to each of our Senators and Representative in Congress, a copy of the foregoing memorial.

Approved, 1st December, 1821.

CHAP. LXVIII.

AN ACT to amend and reduce into one the several acts of the General Assembly for regulating the Militia of this state.

WHEREAS a well regulated militia constitutes the Preamble:
great defence of a free people, Therefore

SEC. 1. *Be it enacted by the General Assembly of the State of Missouri*, That the state of Missouri shall be divided into two divisions and four brigades. The first division shall be composed of the counties of Cooper, Cole, Saline, Lillard, Ray, Chariton, Howard, Boone, Callaway, Montgomery, Gasconade, Ralls, Pike, Lincoln and St. Charles; and the second division shall be composed of the counties of Franklin, St. Louis, Jefferson, Washington, St. Genevieve, Perry, Cape Girardeau, Madison, Wayne and New Madrid. The first brigade in the first division, shall be composed of the counties of Cooper, Cole, Saline, Lillard, Ray, Chariton, Howard and Boone. The second brigade in the first division shall be composed of the counties of Ralls, Pike, Lincoln, St. Charles,

1st. brigade in 2d. division. Montgomery, Callaway and Gasconade. The first brigade in the second division shall be composed of the counties of Franklin, St. Louis, Washington and Jefferson.

2d. brigade in 2d division. The second brigade in the second division shall be composed of the counties of St. Genevieve, Perry, Madison, Wayne, Cape Girardeau and New-Madrid, and all new counties which may be formed, shall be attached to, and form part of the division and brigade districts respectively, in which the territory out of which they shall be formed may be.

Major gen. to each division and brigadier gen. to each brigade.

SEC. 2. *Be it further enacted,* That a major general shall be appointed to each division, and a brigadier general to each brigade, to be elected in the manner herein after directed.

Manner of electing major general.

SEC. 3. *Be it further enacted,* That for the election of majors General, the commander in chief shall issue his order to the commanding officers of the brigades in which the vacancy may be, requiring them to cause elections to be holden on a given day throughout their respective brigades for a major general for the division to which their brigades belong, which election shall be made by the commandants of companies, battalions, regiments and brigades in every respect as is provided for the election of a brigadier general, and a return thereof to be made to the Governor in the same manner, only varying the form; whereupon a commission shall be issued and delivered to the said major general, who shall within ten days thereafter qualify to the same by taking the oath hereinafter prescribed before some judge or justice of the peace a certificate whereof shall be endorsed on said commission.

Qualifications of maj. gen.

SEC. 4. *Be it further enacted,* That the majors general to be elected and commissioned under authority of this act, shall be residents within their respective divisions at the time of election, shall have resided at least twelve months within the state previous thereto; and shall be at least twenty-one years of age at the time of their election.

Oath of maj. general.

SEC. 5. *Be it further enacted,* That the said major general on the receipt of his commission and before he enters on the execution of his office, shall take the following oath, to wit: "I. A. B. do solemnly swear or affirm as the case may be, that I will support the constitution of the United States, and of the state of Missouri, and demean myself faithfully in office, I will be faithful and true to the state of Missouri of which I profess myself to be a citizen, and will justly execute the office of major general in the militia thereof according to the best of my skill and ability, so help me God." If the said major general,

Failing to

al shall fail to qualify as aforesaid within ten days after the receipt of his commission, his office shall thereby be considered as vacated and a new election shall be held to supply the vacancy. qualify, office vacated.

SEC. 6. *Be it further enacted*, That the oath prescribed in the fifth section of this act shall be administered by some judge or justice of the peace, a certificate whereof shall by such judge or justice of the peace administering the same be endorsed on the commission of the said officer. Certificate of oath to be endorsed on com.

SEC. 7. *Be it further enacted*, That brigadiers general shall be elected by the commissioned officers of their respective brigades. Whenever a vacancy occurs by death, resignation or otherwise, the major general of the division in which such vacancy occurs, shall immediately issue orders to the several commandants of regiments within the brigade in which the vacancy has occurred, requiring them to cause an election to be held to fill such vacancy, whereupon the said commandants shall respectively issue orders to the several commissioned officers of their respective regiments commanding them to meet at the court house of their respective counties on some day not exceeding sixty days from the date of the order of the major general, which said day of election shall be the same in each county and be determined by the major general issuing the order, and then and there to vote by ballot for a brigadier general to supply the vacancy: the commandant of the regiment, or in case of his absence, the officer of the next highest grade who shall be present, shall preside at the election, and a majority of the said commissioned officers who shall be present and shall vote at said election shall determine the same. After the said election shall be determined, the officers present shall make out a certificate in the following form, to wit: "We the undersigned commissioned officers of the _____ regiment in the county of _____ having met at the court house in the said county, on the _____ day of _____ in the year _____ for the purpose of electing a brigadier general for the _____ brigade of the _____ division of Missouri militia, do hereby certify that _____ of the county of _____ within the said brigade had _____ votes," which certificate shall be signed by the said officers and forthwith transmitted to the commander in chief, who shall examine the same and determine who is duly elected brigadier general; whereupon he shall issue a commission and cause the same to be delivered to the said brigadier general, who shall within ten days thereafter take the oath prescribed in the fifth section of this act with the necessary Mode of electing brig. gen.

Form of return

Brig. gen. to be commissioned & to qualify.

variation as to office, which said oath shall be administered by some judge or justice of the peace, a certificate whereof shall be endorsed on the commission by the judge or justice of the peace administering the same. and if the said brigadier general shall fail to qualify within the time limited as aforesaid, his office shall be considered as vacated and a new election shall be held to fill the vacancy.

Qualifications
of brig gen.

SEC. 8. *Be it further enacted,* That the brigadiers general to be elected and commissioned, under authority of this act shall be residents within their respective brigades at the time of election, shall have resided at least twelve months within the state previous to, and shall be at least twenty-one years of age at the time of their election.

Com. in ch'f.
to determine
election for
maj gen. in
case of a tie.

SEC. 9. *Be it further enacted,* That if at any election for a major general there shall be given an equal number of votes for any two candidates or persons and such number of votes for both shall constitute more than two-thirds of the whole number of votes given, a certificate of the votes given for each candidate or person shall nevertheless be signed and forwarded to the commander in chief by the presiding officer; and the commander in chief in such case shall determine which of the two candidates or persons aforesaid shall be appointed, and shall issue a commission accordingly. The appointment shall be made in the same manner where the whole number of votes given shall be equally divided for three or more candidates or persons.

Elec. of b gen.
to be deter-
mined by lot
in case of a tie.

SEC. 10. *Be it further enacted,* That if at any election for a brigadier general, in any county within the brigade, an equal number of votes shall be given for any two candidates or persons, and such number of votes for both shall constitute more than two thirds of the whole number of votes given, the election shall be determined by lot, and a certificate made out accordingly: if the whole number of votes given shall be equally divided for three or more candidates or persons, the election shall, in like manner, be determined by lot, and a certificate made out accordingly. And if after the several returns shall be transmitted to the commander in chief, it shall be found that any two candidates or persons shall have an equal number of more than two thirds of the votes given, or that three or more candidates or persons shall have an equal number of the same, in such case he shall determine which of the candidates or persons aforesaid shall be appointed, and shall issue a commission accordingly.

SEC. 11. *Be it further enacted,* That there shall be an

adjutant general for the militia of the state, appointed ^{Ad'jt. gen. to be appointed.} and commissioned by the governor; but no person shall be so appointed who shall not have resided within the state at least twelve months previous to their appointment, and who shall not be at least twenty one years of age at the time thereof. The said adjutant general shall ^{Qualifications.} be allowed for his services an annual compensation of two ^{His compensation.} hundred dollars, to be paid out of the state treasury, in the same manner the salaries of all state officers are, by law, authorized to be paid: before he enters on the duties of his office he shall take the oath prescribed in the ^{To take an oath.} fifth section of this act, with the necessary variation as to office, within ten days after the receipt of his commission, which said oath shall be administered by some judge or justice of the peace, a certificate whereof shall be endorsed on said commission by the judge or justice administering the same, and if he shall fail to qualify within the time limited as aforesaid, his office shall be considered as vacated, and a new appointment shall be made to fill the vacancy.

Sec. 12. *Be it further enacted,* That the commander ^{Staff of com.} in chief shall be entitled to four aids de camp, who shall ^{in chief.} be appointed and commissioned by him accordingly, of which there shall be one resident within each brigade; the majors general shall appoint each two aids de camp, one ^{Of maj. gen.} division inspector, and one division quarter master, who shall be resident within their respective divisions, and the brigadiers general shall appoint each one aid de camp, ^{Of brig. gen.} one brigade inspector, and one quarter master of brigade, who shall be residents of their respective brigades; the said appointments shall be made and certified by the respective officers to the commander in chief, who shall issue commissions accordingly; but no person shall be appointed an aid de camp, or brigade inspector, or quarter ^{Qual of staff officers.} master of brigade, who shall not have resided at least twelve months within the state previous thereto, and shall not be twenty one years of age at the time of the appointment. All vacancies in said offices shall be filled by like appointments.

Sec. 13. *Be it further enacted,* That aids de camp, division inspectors, and quarter masters, brigade inspectors, and quarter masters of brigade, shall severally take the oath prescribed in the fifth section of this act, with the necessary variation as to office, within ten days after the receipt of their respective commissions, which said oath shall be administered by some judge or justice of the peace, a certificate whereof shall be endorsed on said commissions by the judge or justice administering the ^{To qualify or see th. in offices to be vacated.}

same respectively; and if either of the said officers shall fail to qualify within the time limited as aforesaid, his office shall be considered as vacated, and a new appointment shall be made to fill the vacancy.

SEC. 14. *Be it further enacted,* That each brigade shall be divided into regiments, each regiment shall be composed of two battalions, each battalion shall be composed of not less than two, nor more than four companies, and each company shall be composed of not less than thirty two, nor more than one hundred non-commissioned officers, musicians and privates: *Provided,* That there shall be at least one regiment in each county, and whenever the commanding officer, or officers of a regiment, or regiments within any county, may deem it expedient to constitute a new regiment within the same, they shall certify the same to the commander in chief, who shall constitute a new regiment accordingly.

Brigades to be divided into reg'ts. bat's. & companies.

One reg't. in each county.

Com. in chief to nom. reg'ts.

Field officers to divide reg'ts into bat'ls. and companies, and nom. them.

To be registered by adj't. gen.

To rank according to numerical designation.

Field officers to reg't.

Reg'tal. staff.

SEC. 15. *Be it further enacted,* That the commander in chief shall divide the militia of the state into regiments, and number the same from one upwards, and constitute new regiments when the same is recommended by the people by the proper officer or officers, and number the same. The field officers of the regiment, or a majority of them, shall divide the regiments into battalions, and companies, and number each of the said battalions and companies from one upwards, and shall certify the same to the commander in chief; and it shall be the duty of the commander in chief to have the said numbers of regiments, battalions and companies, registered in the office of the adjutant general; and every commission hereafter issued, shall express the number of the division, brigade, regiment, battalion and company, respectively, to which the person entitled to the same shall belong.

SEC. 16. *Be it further enacted,* That divisions, brigades, regiments, battalions and companies, and the officers commanding the same, respectively, shall rank according to their numerical designation, and at any regimental or battalion muster, the several companies shall form a battalion, and the battalions form a regiment, according to their rank.

SEC. 17. *Be it further enacted,* That there shall be appointed to each regiment the following officers, to wit: one colonel, who shall command the regiment, one lieutenant colonel, who shall command the first battalion, and one major, who shall command the second battalion, and these shall be the field officers of the regiment; and one adjutant, one quarter master, one paymaster, one judge advocate, one provost marshal, one surgeon, one

surgeon's mate, one sergeant major, one quarter masters sergeant, one drum major, and one fife major, who shall constitute the regimental staff. The colonel, lieutenant colonel, and major, shall be elected in the manner hereinafter directed, and commissioned by the governor or commander in chief; the adjutant, quarter master, pay master, judge advocate, surgeon, and surgeon's mate, shall be appointed by the colonel, and commissioned by the commander in chief, and constitute the commissioned staff; the provost martial, serjeant major, quarter master's sergeant, drum major, and fife major, shall be appointed in like manner, from time to time, as vacancies occur, and constitute the non-commissioned staff.

SEC. 18. *Be it further enacted,* That there shall be appointed to each company the following officers, to wit: one captain, one first lieutenant, and one ensign, and these shall be the commissioned officers of the company; and one first sergeant, one second sergeant, one third sergeant one fourth sergeant, one first corporal, one second corporal, one third corporal one fourth corporal, one drummer and one fifer, who shall compose the non-commissioned officers of the company. The captain, and first lieutenant and ensign, shall be elected in the manner hereinafter directed, and be commissioned by the commander in chief; the other officers of the company shall be appointed by the captain or commanding officer of the same, from time to time, as the offices may become vacant.

SEC. 19. *Be it further enacted,* That field officers shall be elected by the commissioned and non-commissioned officers and privates within their respective regiments or battalions: whenever a vacancy occurs among the field officers by death, resignation or otherwise, the remaining field officers of the regiment shall immediately certify the same to the brigadier general of the brigade to which such regiment belongs, designating the particular regiment or battalion in which such vacancy has occurred; whereupon the said brigadier general shall issue an order directed to the lieutenant colonel, if a colonel is to be elected, or to the colonel, if a lieutenant colonel or major is to be elected, of the regiment in which such vacancy has occurred, requiring him to cause an election to be held to fill said vacancy, on some day specified, not less than thirty, nor more than sixty, days from the date of said order. It shall be the duty of such officer to whom the order is directed, to cause an election to be held accordingly, on the day specified in the order; for which purpose he shall issue orders forthwith to the captains or

Com'ed. staff.

Non-com'ed. staff.

Company officers.

Non-com'ed. company officers.

Field officers, how and by whom elected

In case of vacancy, brig. gen. to order election.

commanding officers of the several companies within the regiment or battalion, as the case may be, commanding them to cause the several commissioned and non-commissioned officers and privates of their respective companies to assemble at their respective places of parade, on the day specified, for the purpose of electing a colonel, lieutenant colonel, or major, as the case may be. The said several captains or commanding officers of companies, immediately on the receipt of the said order, shall cause a notice to be advertised at the most public places within the bounds of their respective companies, notifying the time and place of the said election, and the officer to be elected, and requiring the said commissioned and non-commissioned officers and privates of their respective companies, to assemble accordingly. The several companies, when convened at their respective places of parade, for the purpose aforesaid, shall proceed to choose two discreet persons subject to militia duty within the bounds of said company, as the judges of said election, who, previously to entering upon the duties hereby assigned them, shall each take an oath or affirmation in the form following, to wit: "I, _____ do solemnly swear or affirm, as the case may be, that I will perform the duties of judge of this present election, according to law, and to the best of my abilities, and that I will studiously endeavor to prevent fraud, deceit or abuse in conducting the same, so help me God," which said oath shall be administered by a justice of the peace, if one be present, and if none, then by the judges themselves, the one to the other. The said judges shall appoint two clerks of the election, who shall each take the oath prescribed for the judges, with the necessary variation as to office, which shall be administered by one of the judges. The said clerks shall furnish each a poll book; and head the same in the form following, to wit: "A poll book of an election for the _____ company; _____ battalion, and _____ regiment of Missouri militia, in the county of _____, on the _____ day of _____ in the year _____, held for the purpose of electing a colonel for the said regiment, or a lieutenant colonel, or major of the said battalion, as the case may be." The said clerks shall open a column in each poll book for each candidate or person voted for, heading the same with the proper name of said candidate or person, and shall write within the proper column at full length, the proper names of each and every person voting at said election, according to the vote or votes of each respectively. The poll shall be open from ten o'clock in the fore-

Judges to be chosen, and to take an oath.

Form of oath

Judges to appoint two clerks and administer an oath to each.

Clerks to furnish poll books.

Form of heading.

noon until four o'clock in the afternoon; and after the poll shall have been closed, the said judges and clerks shall carefully compare and correct the same, and at the bottom thereof shall write and subscribe a certificate in the following form, to wit: "We the undersigned judges and clerks of the above election, having carefully compared and corrected the poll books thereof, of which the above is one, do certify that the above poll book presents a correct statement of the votes given at said election, and for whom the said votes were given." One of the said poll books shall be kept by one of the judges, for the inspection of persons concerned therein. And it shall be the duty of one of the said judges from each election held as aforesaid, for the purpose aforesaid, to meet at the court-house or seat of justice of the county, within ten days thereafter, (the day of meeting to be appointed by the field officer from whom the order aforesaid shall issue,) and then and there produce, and carefully compare, the several poll books certified as aforesaid, and the candidate or person having the highest number of votes shall be declared duly elected; but should there be two or more persons having an equal number of votes, and being the highest number on the poll books, the judges shall proceed to determine by lot the candidate or person to be elected, and declare his election accordingly; and it shall be the duty of the said judges assembled as aforesaid, after having compared the poll books, and determined the election as aforesaid, to make out a certificate in the form following, to wit: "We the undersigned judges of election for the several companies of militia, belonging to the _____ regiment, or the _____ battalion, (as the case may be) in the county of _____, having diligently and faithfully examined and compared the several poll books of the several elections, held within the same, do certify, that _____, of the said regiment or battalion, (as the case may be) is duly elected colonel, lieutenant colonel or major (as the case may be) of the said regiment or battalion;" which said certificate shall be signed by all the the judges present, and by them forwarded forthwith to the commander in chief, who shall issue a commission accordingly, and cause the same to be delivered to the person entitled thereto.

Poll to be open from ten to four o'clock.

Form of certificate to be made by judges and clerks.

One of the judges to meet at C. H. to compare poll books.

In case of a tie, to be decided by lot.

Form of the certificate of election.

To be signed and forwarded to governor.

SEC. 20. *Be it further enacted*, That field officers shall be residents of the regiment or battalion (as the case may be) at the time of their election, shall have resided within the state at least twelve months, and shall be at least twenty one years of age at the time thereof.

Qualifications of field officers

SEC. 21. *Be it further enacted*, That field officers shall

To qualify in
ten days.

take the oath prescribed in the fifth section of this act, with the necessary variation as to office, within ten days after the receipt of their respective commissions, which said oath shall be administered by some judge or justice of the peace, a certificate whereof shall be endorsed on said commission by the judge or justice administering the same; and if any field officer shall fail to qualify within the time limited as aforesaid, his office shall be considered as vacated, and a new election shall be held to fill the vacancy.

Company officers,
by whom
& how elected

SEC. 22. *Be it further enacted,* That commissioned officers of companies shall be elected by the commissioned and non-commissioned officers and privates belonging to the same respectively. Whenever a vacancy occurs by death, resignation, or otherwise, the remaining commissioned officers of the company shall immediately certify the same to the colonel of the regiment to which such company belongs, and if there be no colonel, then to the lieutenant colonel of the same, designating the particular vacancy; whereupon the said officer shall issue an order to the captain of said company, or to the first lieutenant, if a captain is to be elected, requiring him to cause an election to be held to fill said vacancy on some day specified, not less than fifteen, nor more than thirty days from the date of said order. It shall be the duty of the officer to whom the order is directed, to cause an election to be held accordingly, on the day specified in the order, for which purpose the same proceedings shall be had as are pointed out in the twentieth section of this act for the election of field officers; a similar notice shall be given, the place of meeting shall be the same, the officers of the election, their qualifications and oaths, shall be the same, and the oaths be administered in the same manner, the duties of said officers at the said election shall be the same, the poll books shall be headed in the same manner with the necessary variation as to the officer, the poll shall be opened and closed at the same hour, and after the poll shall have been closed, the said judges and clerks shall carefully compare and correct the poll books in the same manner, and write and subscribe at the bottom thereof the same certificate, one of said poll books shall remain in the possession of one of the said judges, for the inspection of persons concerned therein; the other shall be forthwith forwarded to the field officer from whom the order for an election shall have issued, who shall examine the same, and the candidate or person having the highest number of votes shall be declared by him duly elected. But should there be two or more persons or candidates

having an equal number of votes, and being the highest number on the poll book, the officer to whom the return is made shall determine the election by lot, after the candidate or person is thus declared, or determined by the said officer to be duly elected, he shall certify the same to the commander in chief forthwith, designating the number of the company, battalion, and regiment, for which said officer is elected, and the commander in chief shall issue a commission accordingly, and cause the same to be delivered to the person entitled thereto.

SEC. 23. *Be it further enacted*, That commissioned officers of companies shall be resident within their respective companies, and shall have resided within the state at least six months at the time of their election. They shall severally take the oath prescribed in the fifth section of this act, with the necessary variation as to office; they shall qualify in the same manner, and within the same time, as is heretofore directed with respect to other officers, and on failure new elections shall be held to supply the vacancies. Qualifications of company officers.

SEC. 24. *Be it further enacted*, That commissioned staff officers of regiments shall be residents within their respective regiments; shall have resided within the state at least six months previous to, and be at least twenty one years of age, at the time of their respective appointments, they shall qualify in the same manner, and within the same time. Qualifications of com'd. staff officers.

SEC. 25. *Be it further enacted*, That non-commissioned staff officers of regiments, and non-commissioned officers of companies, shall, before they enter on the execution of their respective duties, severally take an oath to support the constitution of the United States, and of the state of Missouri, and faithfully to demean themselves in office, which said oath shall be administered by some judge or justice of the peace. Non-comm'd. officers to take an oath.

SEC. 26. *Be it further enacted*, That the resignation of all commissioned officers shall be made in the manner following, to wit: all commissioned officers of companies, and all commissioned staff officers of regiments, shall resign to the colonel or commanding officer of the regiment; field officers of regiments, and brigade staff officers, to the brigadier general; brigadier general, and division staff officers, to the major general; majors general, the adjutant general, and governor's aids de camp, to the commander in chief of the state, and such resignation shall be made in writing: non-commissioned officers of companies shall resign to the captain or commanding officer of the company; and non-commissioned staff officers of regi- Resignation of comm'd. officers to be in writing.
Of non-comm'd. offices in person.

ments to the colonel or commanding officer of the regiment, and such resignation shall be made in person.

Officer certify-
ing vacancy
to state how it
occurred.

SEC. 27. *Be it further enacted;* That it shall be the duty of commanding officers of companies, in certifying vacancies to the colonel, or lieutenant colonel, to state in what manner such vacancy has happened, whether by death, resignation or otherwise. The same information shall be given by field officers to the brigadiers general or majors general, in certifying vacancies, and all election returns made to the commander in chief shall state in what manner the vacancy happened, to supply which the election was held.

Certain per-
sons exempt
from militia
duty.

SEC. 28. *Be it further enacted,* That judges of the supreme court, the chancellor, judges of the circuit courts, principal clerks of the superior and inferior courts, and sheriffs, the treasurer, auditor, attorney general, secretary of state, and their clerks, professors, tutors, and students of public seminaries of learning, the public printer, and such as may be necessarily employed in his office, ministers of the gospel, licensed to preach according to the rules of their sect, clerks and other officers attending either house of the general assembly, the president, cashier, and clerks of any incorporated bank, or its branches, commissioners and clerks of the loan office, keepers of public jails, millers actually and necessarily employed in the management of water grist mills, or horse mills, public inspectors that may be appointed by virtue of any law, postmasters, carriers of the mail, and ferryman actually and necessarily employed at any public ferry, shall be, and are hereby exempted from the performance of militia duty: *Provided,* That in case of a draft none shall be exempt therefrom, or from serving a tour of duty, except regularly ordained ministers of the gospel, or such other persons exempted by the laws of the U. States. All able bodied free white male inhabitants of the state, between the ages of eighteen and forty-five years, except those who are hereinbefore particularly exempted therefrom, shall be liable to perform the ordinary duties of militia, shall be enrolled by the captain or commanding officer of the company within whose bounds they may respectively reside, and shall be drilled and disciplined for the defence of the state.

Who liable to
perform mili-
tia duty.

Persons who
scruple to bear
arms, to pay a
fine of \$1 at
each muster.

In case of in-
vasion to fur-

SEC. 29. *Be it further enacted,* That those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal services, which equivalent shall be one dollar per day for each muster, to be collected as fines are collected; but in case of invasion, insurrection, or war, where such persons are

called into service, they shall be permitted to find an able-bodied substitute in lieu of personal service, or if any such person shall fail to furnish such substitute, the captain of the detachment to whose company he belongs, shall be authorized, and is hereby directed to hire a substitute for such person, who shall be bound to pay such substitute a sum not exceeding one dollar per day, as said captain may agree shall be paid, and said sum thus agreed shall be recovered before any court or justice of the peace having jurisdiction of like sums, by action of debt, or any other action, usual in sums of like magnitude, in favor of such substitute, against such conscientious person, which said stipulated sum shall be due and payable so soon as the substitute is discharged from service, or in case of his death, shall be payable to his representatives, so soon as the term of the corps, to which such substitute was attached expires.

SEC. 30. *Be it further enacted,* That it shall be the duty of the captains, or commanding officers of companies respectively, to enrol for militia duty all persons by this act made liable to the performance of the ordinary duties of militia, who are resident within the bounds of their respective companies; and all persons who shall from time to time arrive at the age of eighteen years, resident as aforesaid; and for the purpose of ascertaining such age, the said officers are hereby respectively authorized to administer, when necessary, an oath to the father or nearest relation of any such person as he may believe to be of the age aforesaid, or to any other person knowing his age, or to such person himself, if necessary, and the person so sworn, shall state the age according to his or her knowledge of the same, and the officer administering such oath, shall determine thereupon, whether such person ought to be enrolled, and shall act accordingly. They shall in like manner enrol all persons, who shall come to reside within the bounds of their respective companies, if liable to perform militia duty as aforesaid: *Provided,* That no person shall be called upon to perform militia duty, or be enrolled therefor, who has not resided at least two months within the state, and ten days within the proper bounds of the respective companies, except in case of invasion, actual or threatened insurrection, or war, when any such person, on proper notice being given, may be enrolled, and ordered into service by the captain, or commanding officer, within whose bounds he may reside: and it shall be the duty of said officers respectively, when they enrol any person for militia duty as aforesaid, to notify such person without delay, of his enrollment, by a

nish a substitute.

Duty of commanders of companies to enrol all persons within the bounds of his company who are subject to militia duty.

To be notified of his enrollment.

non-commissioned officer of the company, which said person so enrolled and notified as aforesaid, shall thereafter be required to perform the ordinary duties of a militiaman, and for a non performance of the same when required, shall be subject to such fines and penalties, as are hereinafter provided: *Provided*, That the residence of every militiaman in this state shall be considered to be at the place where he has his lodging:

Exempt from militia duty on arriving to the age of 45 years SEC. 31. *Be it further enacted*, That it shall be lawful for the captain or commanding officers of companies to discharge any person from militia duty, upon his producing an affidavit from some justice of the peace, that he believes, from the best information he has, that he is forty five years of age.

Militiamen to arm and equip themselves. SEC. 32. *Be it further enacted*, That each militiaman shall provide himself within one month from the date of his enrollment, with a good musket or fusee, and a sufficient bayonet and belt, also two spare flints, a knapsack; and pouch with a box therein to contain twenty-four cartridges suited to the calibre or bore of said musket or fusee, each cartridge to contain a proper quantity of powder, and ball; or a good rifle, knapsack, pouch and powder-horn, with twenty-four balls suited to the calibre or bore of said rifle, and a quarter of a pound of powder. Every enrolled person shall appear so armed, accoutred and provided as aforesaid when called out or ordered into actual service, but when called out to muster, or for exercise only, it shall only be necessary for each militiaman to appear with a good musket or fusee, and a sufficient bayonet, and belt, or with a good rifle only; and every person so providing himself with arms, ammunition and accoutrements required as aforesaid, shall hold the same exempt. from all suits, distresses, executions or sales for debt, damages or fines, or for the payment of state or county taxes.

Arms. exempt from distress.

Officers and militiamen, judges & clks. of election, exempt from arrest in going to and returning from election or muster

SEC. 33. *Be it further enacted*, That the militiamen of this state, shall be exempted from arrest, both in going to, and returning from any election for officers, at which they shall respectively have a right to vote, and shall likewise be exempted from arrest while attending the same, except in case of treason, felony, or breach of the peace, nor shall any officer be subject to arrest, while going to, attending at, or returning from, any election at which the said officer may have a right to vote, except as aforesaid, nor shall any non-commissioned officer, or private be subject to the same, while executing the lawful orders of a superior officer, except as aforesaid; and judges and clerks of elections authorized by this act, shall severally

be exempted from arrest, until they shall have respectively discharged their duties, except in the cases above mentioned. In like manner except in case of treason, felony or breach of the peace, all militiamen, and their officers, shall be exempted from arrest, both going to, attending, or performing service at, or returning from, any lawful muster, or parade, inspection, courts martial, or court of assessment, or place of rendezvous, established by order of a superior officer.

SEC. 34: *Be it further enacted*, That the boundaries of divisions, brigades, and regiments, shall be permanent: *Boundaries of divisions and brigades to be regulated by General Assembly.* *Provided however*, That the boundaries of divisions, and brigades, and the population of the state shall make the same, when or necessary, may be altered, or modified; and new divisions, and brigades constituted by authority of an act of the General Assembly, and, provided, that the boundaries of regiments may be altered or modified by the field officers or a majority of them, for the purpose of constituting a new regiment whenever that may be necessary or expedient, and whenever by the alteration or modification of the boundaries of a regiment as aforesaid, commissioned officers shall be detached or separated from the regiment to which they were attached by their commissions, they shall nevertheless continue as commissioned officers of the regiment in which they shall reside at the time such alteration or modification shall take place, as though they had received commissions for the same. *Of regiments by the field officers thereof.* The boundaries of battalions and companies may be altered or modified and new companies may be formed by the field officers (or a majority of them) of the regiment to which they shall respectively belong: *Of battalions and companies by the field officers of the reg't.* *Provided*, That such alteration or modification be not inconsistent with the limitations and restrictions contained in the fifteenth section of this act; and it shall be the duty of the adjutant of the respective regiments to keep a record of the boundaries of the battalions and companies belonging to the same, and whenever new companies shall be formed as aforesaid, the commanding officer of the regiment shall issue an order to the commanding officer of the companies out of which the new company is to be formed requiring an election to be held for officers; and officers shall be elected and commissioned for the said company in the same manner as is before directed in case of vacancies: *Adj't. to keep a record of the boundaries of companies when formed, election to be ordered.* *Provided* of such commissioned officers resident within the boys formed new company at the time such new company officers shall nevertheless continue as commissioned officers.

the same as though they had received commissions therefor.

Com. of gr'ds.
light inf't.
e'vry.riflemen
and art'y.

SEC. 35. *Be it further enacted*, That the commander in chief shall provide for raising companies of grenadiers, light infantry, cavalry, riflemen and artillery, agreeable to the laws of the United States at his discretion; and when raised and officered they shall be subject to the laws and rules of the said United States and of this state as other militia. In all cases where a troop of horse, an artillery, light infantry, grenadier or rifle company shall be formed, the men enlisting therein shall not be discharged from their duty in the regiment or company from which they were taken, until such troop or company shall have been organized, and no private or non-commissioned officer while he continues to reside within the bounds of such troop or company, shall quit the same without the consent of the captain thereof or unless the said troop or company be dissolved.

Uniform of officers.

SEC. 36. *Be it further enacted*, That at all musters, reviews, courts martial or courts of assessment as well as in actual service, the following shall be the uniform and equipments of the several officers of militia of this state, to wit: General, field and staff officers shall appear in uniform with side arms and accoutrements, as is or shall for the time being, be prescribed for officers of the same rank and corps in the army of the United States; captains and other commissioned officers of companies a deep blue hunting shirt and pantaloons with red trimming, half boots or gaiters, a round black hat, black cockade, red plume, and small sword or hanger: *Provided*, That surgeons and surgeons mates shall not be compelled to appear in uniform: and said uniform shall be exempt from all seizures, sales or executions whatsoever.

Reg'tal: muster in Oct in every year.

SEC. 37. *Be it further enacted*, That there shall be in the month of October in every year a regimental muster at such place as the commandant thereof may direct, and every commissioned and non-commissioned officer, musician and private, belonging to the regiment shall attend said muster armed and equipped according to law.

Battalion muster in May in each year.

There shall be a battalion muster in every battalion, at such place as the commandant thereof shall direct, in the month of May in each year; and every officer, non-commissioned officer, musician and private, belonging to the battalion as well as the regimental staff shall attend such muster.

Two company musters in April & Sept.

There shall be two company musters held in each year, to wit: in the months of April and September at such times and places — the commanding officers of companies may di-

rect, and every commissioned and non-commissioned officer, musician and private belonging to the company, shall attend said muster armed and equipped according to law: *Provided*, That the places selected for the several musters as well as the places selected for the meeting of courts martial and courts of assessment, hereinafter authorized, shall be as central as circumstances will admit: *And provided*, That the court for the assessment of fines shall have power to remit any militiaman's fine for his not appearing armed according to law, if it shall appear to the satisfaction of such court that such militiaman is in so reduced a circumstance that he cannot provide himself with arms.

Places of muster to be central.

Courts of assessment may remit fines.

SEC. 22. *Be it further enacted*, That it shall be the duty of every commissioned and non-commissioned officer, musician and private, to appear at the places of parade appointed for the several musters respectively, whether regimental, battalion or company on the several days appointed for the same by ten o'clock in the forenoon thereof, the officers in uniform and armed and equipped, and the privates armed as directed by this act, and no officer or private shall leave the parade unless by leave of the commanding officer of the corps. At the several musters aforesaid the captain or commanding officer of each company shall direct the first sergeant thereof to call the roll in his presence between the hours of ten and eleven o'clock, and all delinquencies both as to absence, arms and equipments of officers and privates as well as to a refusal and failure to perform the duties required on parade shall be carefully and particularly noted down and returned by the captain or commanding officer aforesaid; and it shall be the special duty of said captain or commanding officer strictly to examine the arms and equipments of officers and privates under his command and state the strength of the company and number of rifles, muskets or fuses and bayonets as well as the equipments at the time of their making their annual returns as hereinafter directed. It shall be the duty of said captain or commanding officer of each company to make a correct return of all delinquencies as aforesaid which may happen within the year either as to absence, arms and equipments or to a failure or refusal to perform duties required on parade; also of all such non-commissioned officers or privates who may have given disturbance at any muster; which return shall be delivered to the judge advocate of the court of assessment on or before the last Monday in November in each year: *Provided however*, That no captain or commanding offi-

Officers and privates to appear at the place of muster by ten o'clock.

None to depart without leave of the commanding officer.

1st. Serg't to call roll.

Delinquencies to be noted & returned.

Duty of captain in making return of his company.

To be delivered to judge advocate on or before 1st. Monday in Nov.

Delinquences
not to be re-
ported by capt.
if sufficient ex-
cuses be offer-
ed.

cer as aforesaid shall be bound to return any person as a delinquent on account of absence if such person was known to the said captain or commanding officer or other creditable person present, to be sick or unable to attend by reason of any bodily infirmity or absent from the county on indispensable business at the time of such muster: *Provided also*, That all such excuses shall be on oath which may be administered by the captain or commanding officer of the company.

Penalty for
disorderly or
mutinous con-
duct by non-
com'd. officer,
musician or
private.

SEC. 39. *Be it further enacted*, That if any non-commissioned officer, musician or private shall behave himself disobediently or mutinously when on duty or before any court or board directed by this act to be held, the commanding officer or court or board may confine him during the parade or during the sitting of the court or board and he may moreover be fined at the discretion of a court martial or of assessment in any sum not exceeding ten dollars to be collected as other fines under this act, and if any bystander shall attempt to molest or insult any officer or private while on duty at any muster, or shall be guilty of like conduct before any court or board the commanding officer or such court or board may cause him to be confined during the parade or during the sitting of the court or board and be fined by any court or board in a sum not exceeding ten dollars.

Or bystander.

Men to be ex-
ercised at
musters at
least three
hours.

SEC. 40. *Be it further enacted*, That at the several musters hereinbefore directed to be held, the men shall be exercised at least three hours on each day agreeable to the rules now prescribed or adopted or that may hereafter be prescribed or adopted by Congress for disciplining the militia and armies of the United States, except such deviations therefrom as may be rendered necessary from some unavoidable circumstance.

Duties of maj-
gen.

SEC. 41. *Be it further enacted*, That it shall be the duty of each major general to receive from the adjutant general copies of requisitions of men made by the government upon his division and shall without delay make a detail on the brigades in his division agreeable to the returns made by the brigade inspectors and shall issue his orders to the brigadiers accordingly. He shall attend the several regimental musters in the bounds of his division once in every two years at least and may whenever he chooses so to do, attend at any muster or review whatsoever and give any orders for the disciplining of the troops that he may deem expedient.

Duties of brig-
gen.

SEC. 42. *Be it further enacted*, That it shall be the duty of the brigadier general to receive from the adjutant general or major general copies of requisitions on his

brigade and shall make a detail on the regiments in his brigade agreeable to the returns made by the adjutants of regiments and give orders to the commandants of regiments accordingly. He shall appoint the time of regimental and battalion musters in each year, written notices of which he shall give to the commandants of regiments on or before the first day of February in each year. He shall visit each regiment in his brigade annually on their regimental muster days and review them and whenever he chooses so to do he may attend any muster in his brigade and direct the discipline and exercise thereof. He shall furnish the majors general with a list of the days appointed by him for regimental musters. He shall have power to order the officers non-commissioned officers and musicians of each regiment in his brigade to be trained together at the place appointed for the regimental muster, to continue not less than two nor more than four days at his discretion; which training shall be in the month of September annually and whose duty it shall be to encamp the officers on the ground and superintend such training in person, of which training he shall notify the commandants of regiments in his orders for the musters.

SEC. 43. *Be it further enacted,* That commandants of regiments shall receive from the brigadier copies of requisitions made on their regiments and shall make the detail on the several companies of said regiment agreeable to the strength of each and issue his orders to the several captains or commanding officers of the same accordingly. They shall receive the written orders of the general of brigade for the times of holding regimental and battalion musters for the year; and shall give like notice thereof to the commandants of battalions on or before the fifteenth day of February in every year or as soon thereafter as may be, to which they shall add the places of holding their regimental musters and courts of assessment and the time and place of training; at which training they shall call the roll and note down and report delinquencies to the judge advocates of their respective regiments or if a field officer to the brigadier general, or if the commandant be delinquent the adjutant shall return him accordingly. They shall attend the regimental and battalion musters and may attend the company musters when they choose to do so and give such orders at the same as they may think proper for their exercise.

SEC. 44. *Be it further enacted,* That it shall be the duty of the major general, brigadier general and commandants of regiments upon receiving notice or information of

Duties of commandants of regts.

In case of invasion or insurrection du-

ty of certain
officers.

an invasion or insurrection, immediately to embody such force as they may deem competent for the emergency and give the earliest notice thereof to their next superior officer and to the commander in chief.

Duties of com-
mandants of
bat'ls.

SEC. 45. *Be it further enacted,* That it shall be the duty of commandants of battalions to receive the written orders of the commandants of regiments, for the times and places of regimental musters, trainings and courts of assessment, and the time of battalion musters appointed for the year, and give a written notice thereof to the commissioned officers of companies within their respective battalions on or before the first day of March in every year or as soon thereafter as may be, adding thereto the places of holding such battalion musters. They shall exercise their battalions on their days of muster and when they choose to do so, may attend any company muster and give orders for the exercise of the same.

Duties of com-
manding offi-
cers of compa-
nies.

SEC. 46. *Be it further enacted,* That the captains or commanding officers of companies shall receive from the commandants of battalions the written notices which they are hereinbefore required to give and shall on or before the fifteenth day of March in each year or as soon thereafter as may be, deliver to the non-commissioned officers of their respective companies a certificate of the times and places of holding regimental, battalion and company musters and trainings and the court of assessment; and it shall be the duty of the non-commissioned officers of each company to receive the same and deliver to or leave at the place of lodging or the usual place of abode of each non-commissioned officer, musician and private in their respective companies, a like written notice of the times and places of holding the said several musters, except trainings and courts of assessments for the year, which notice shall be given on or before the first day of April in each year or as soon thereafter as may be; but in all cases where any person may move into the bounds of any company, or arrive at the age of eighteen years, after the first day of April in any year, the captains or commanding officers of companies, shall as soon as possible give to such person a like notice in the same manner: *Provided,* in all cases where any militiaman receives three days notice of any muster from the proper officer, it shall be a lawful and sufficient notice: *And provided,* That it shall be the duty of commanding officers of companies from time to time to cause all persons to be notified to attend muster who are subject to militia duty and who from accident or neglect failed to receive a notice before the first day of April.

Non com'd.
officers musi-
cians & priv's.
to be notified.

Three days
notice deem-
ed a legal no-
tice.

sec. 47. *Be it further enacted,* That all non-commissioned officers who deliver notices to the non-commissioned officers, musicians and privates of the times and places of holding musters and the court of assessment shall return to their respective captains or commanding officers of companies on oath from time to time, a list containing the names of the persons by them notified and if not delivered by them in the time prescribed by law, they shall also note the time such notice was delivered, which said oath any commanding officer of a company is hereby authorized to administer; which list or lists shall be returned by the respective commanding officers of companies to the judge advocate of the regiment to which they belong on or before the day appointed for the sitting of the court of assessment, to be by him laid before said court, which shall be sufficient evidence of notice to delinquents; and no person shall be fined for absence from any muster unless he has had lawful notice of the same, nor shall it be necessary for the the commanding officers of companies to note or return as delinquent any person who shall not have had lawful notice as aforesaid.

Duty of non com'd officers in declaring notices.

To report to Capt.

And he to the judge adv. of the reg't.

sec. 48. *Be it further enacted,* That the commanding officers of companies, shall at their regimental muster in each year make a public proclamation of all the delinquents they are about to return to the court of assessment and state the names thereof as well as the particular muster or musters at which and the particular manner in which they were delinquent, no alteration shall then be made as to said delinquents, noted as hereinbefore directed but the same shall be returned as noted to the proper court of assessment.

Public proclamation of delinquents to be made at courts of assessment.

sec. 49. *Be it further enacted,* That it shall be the duty of the commanding officer of each company to make out a complete roster of his company and number the men from one, up to the number of men in his company placing those who have not performed duty on the lowest number in the company by lot, after them, those who have performed the lowest number of tours by lot the next in number, and so on, placing those of the lowest number of tours next on the roll, and proceed in this manner until all have drawn their numbers; and if any militiaman be absent or refuse to draw the captain or commanding officer shall draw for him; and when a detail shall be made on the company, the captain or commanding officer shall begin with the first man on the roster and call out the number of men required according to their numbers and when any militiaman moves into the bounds of another company he shall produce a certificate

Roster of com. to be made out and men numbered.

Militiaman refusing to draw capt. to draw for him.

Removing in-
to bounds of
another com.
to produce
cert. of his
number.

Refusing, to
be placed 1st.
for service.

Persons arriv-
ing to the age
of 18 years,
how enrolled.

Those coming
to the state.

Substitutes
how and when
to be rec'd.

Rec't. for
sub. to be g'v'n.

Rec't not
transferable.

from the captain or commanding officer of the company to which he last belonged shewing the number such militiaman held in the company, and the captain or commanding officer of the company in the bounds of which said militiaman shall go to reside, on said certificate being presented to him, shall place him next preceding the militiaman of the same number in his company or next number entitled to the same credit; and if such militiaman moving as aforesaid, shall fail to produce such certificate, the said officer shall place him first for service. Those arriving at the age of eighteen years, shall be placed next to those who have not served and if all have served, then with those who are first for service; those who shall have lately come to reside in the state shall be placed at the end of the roll and shall be the last called on to perform service: said persons shall be placed on the roll in the order in which they shall respectively arrive at the age aforesaid or in which they shall come to reside as aforesaid. The duties hereby required of captain or commanding officers of companies respecting the enrolling of the men belonging to their respective companies for service, when detailed shall be performed at the first company muster in the year eighteen hundred and twenty-two. When marching orders shall be given, captains may appoint some place in the bounds of the regiment or regiments from which their companies were detailed where they may receive substitutes in place of those detailed for service; *Provided* they are all able bodied men and such as the captains will approve of, and if approved they shall give a receipt for the same to the person furnishing such substitute, which shall be evidence to the officer from whose company such detail is made, that such person is entitled to a credit, which credit shall be entered in each company book, after the corps to which such substitute may be attached shall be discharged from service for the time such corps has served and no longer; and if the substitute shall be in the service of the United States the credit shall be given for the time for which such detachment was detailed for service: *Provided*, That no receipt for a substitute or discharge for service performed shall be transferable; and no militiaman shall be exempt from the performance of actual service, except him who has actually performed the same, either in person or by substitute entered on the muster rolls of the company while in service; and each militiaman furnishing such substitute, shall nevertheless be subject to perform the ordinary duties of militia and shall attend all musters directed by this act, at which

other militiamen of the same company are required to attend; and it shall be the duty of all persons by this act exempted from the ordinary duties of militia except regularly ordained ministers of the gospel, to attend the company muster of the company in which they shall respectively reside in the month of April in the year eighteen hundred and twenty-two and stand their draft and be enrolled for service, and if any such person shall be absent or being present shall refuse to draw, the captain or commanding officer of the company shall draw for him and such person shall be enrolled for service accordingly: *Provided*, That no person shall be required to attend said muster, or to be enrolled for service who being above the age of forty-five years has been or shall be regularly discharged from militia duty: *And provided*, That said exempts who are hereby required to be enrolled for service, may when marching orders shall be given, discharge themselves in the same manner as other militia, by finding and furnishing proper substitutes, and it shall be the duty of the non-commissioned officers when they give the notices of the several musters for said year, to give to every such exempt as shall be resident within the bounds of their respective companies a written notice of the time and place of holding the said first company muster, requiring such person to attend the same.

Persons exempt from militia duty except ministers of the gospel, to attend company musters in April 1822 and be enrolled.

Persons above the age of 45 years not bound to attend.

SEC. 50. *Be it further enacted*, That it shall be the particular duty of the lieutenants and ensigns of each company to assist in the exercise and discipline thereof and report every defalcation or disobedience in the government and exercise of the same.

Duty of lieut's and ensigns.

SEC. 51. *Be it further enacted*, That in case of the absence, death or inability of any officer, the next in rank shall take the command and discharge all the duties required by this act of his superior during such vacancy, absence or inability and shall be subject to the same penalties imposed by this act on such superior officer in like cases for a failure or neglect to perform the duties devolving on him by reason of such vacancy absence or inability.

In the absence of any officer, next in rank to take command.

SEC. 52. *Be it further enacted*, That all officers of every grade shall implicitly obey the orders of their superior officers; aids de camp shall carry and execute the orders of their generals; division inspectors shall execute the orders of their generals and of the adjutant general, division quarter masters the orders of their generals and of the quarter master general, brigade inspectors the orders of their generals and of division inspectors, quarter

Duties of certain staff officers.

masters of brigade the orders of their generals and of division quarter-masters, quarter masters of regiments the orders of their commandants of regiments and of quarter-masters of brigades, adjutants and sergeant majors shall carry and execute the orders of field officers, and sergeants shall carry and execute the orders of captains or commanding officers of companies and of sergeant majors of regiments.

Penalty on
brig gen for
failing to give
notice of regi-
mental and
battalion mus-
ters.

On col. failing
to give notice
to command-
ants of battal-
ions.

SEC. 53. *Be it further enacted,* That if the brigadier general shall fail to notify the commandants of regiments of the time of holding the regimental and battalion musters in the bounds of his brigade within the time prescribed by this act, he shall be liable to the fine hereinafter imposed for such neglect of duty; and in every such case the commandant of each regiment shall appoint his own regimental and battalion musters; and if any commandant of a regiment shall fail to give notice to the commandants of battalions, of the time of holding battalion musters within the time prescribed by law he shall be liable to the fine hereinafter imposed for such neglect of duty; and in every such case the commandant of each battalion of the regiment shall appoint and give notices of the times and places of holding his battalion musters.

Adj. gen. to
keep his office
at seat of gov't.

His duties.

SEC. 54. *Be it further enacted,* That the adjutant general shall keep his office at the seat of government. He shall keep a fair record of all orders and communications which he shall from time to time receive from the commander in chief of the state, and obey all orders from him relative to the duties of his office: he shall receive the annual returns from the division and brigade inspectors from which he shall make out a general return of the whole strength of the militia of this state which he shall lay before the commander in chief on or before the tenth day of December annually, a duplicate whereof he shall without delay forward to the secretary of war of the United States. He shall furnish blank printed forms of annual returns of divisions, brigades, regiments, battalions and companies, on or before the first day of April in each year, which when made out shall shew the strength or number of men, the arms, whether rifles, muskets or fuses and bayonets, the number of men that have performed a tour or tours of duty and the number subject to the next call to be made on the militia; and the public printer shall print the same when required by the adjutant general. All letters or packages coming to or sent by him relative to the duties of his office by mail shall be paid for by the state on the same being certified by

the Governor that they relate to the duties of his office, which the Governor shall certify to the auditor of public accounts for payment accordingly; and when a detachment is ordered to march he shall furnish the necessary blank muster rolls, morning, weekly and monthly reports which he shall make out and cause to be printed together with the forms of annual returns; and he shall also keep a roster of the general and field officers to enable the Governor to make a detail therefrom and the secretary of state is hereby directed to furnish a list of the several commissioned officers to the adjutant general. He shall perform such other duties as are or may be enjoined on him by the laws of the United States and of this state.

SEC. 55. *Be it further enacted*, That a quarter-master general of the state shall be appointed and commissioned by the commander in chief who shall take the same oath with the necessary variation as to office within the same time: *Provided*, That no person shall be so appointed who shall not have resided within the state at least twelve months previous to and who shall not be at least twenty years of age at the time of his appointment; vacancies in said office shall be filled by appointments made in the same manner. The quarter master general shall be allowed for his services an annual compensation of one hundred dollars to be paid out of the state treasury in the same manner the salaries of all state officers are by law authorized to be paid. He shall keep his office at the seat of government. He shall keep a fair record of all orders and communications which he shall from time to time receive from the commander in chief and obey all orders from him relative to the duties of his office. He shall collect and keep safely all arms and military stores which may belong to the state, which shall be subject to the orders of the commander in chief, and he shall issue blank printed forms of estimates annually, on or before the first day of April to the division, brigade and regimental quarter-masters, which estimate when made out shall shew the quantum of arms camp equipage, &c. and which shall be made out from the annual returns furnished the several staff officers whose duty it is to make out the returns on the application of any quarter-master, after the times for making out their annual returns; and the public printer is hereby authorized and required to print the same on application of the quarter-master general, and in case of a detachment being ordered to march he shall furnish such blank printed forms, as may be necessary in the quarter-masters department, which shall

Quartermaster
gen. to be ap-
pointed.

Qualifications.

His compen-
sation.

His duties.

be prepared by him and printed together with the forms of estimates; all packages and letters sent to or from him relative to the duties of his office shall be paid for by the state in the same manner as those sent to or from the adjutant general. The secretary of state is hereby required to furnish the quarter-master general with a list of officers in his office, to enable him to direct the blanks to the several officers entitled thereto. The said quarter-master general shall perform such other duties as may be required by the laws of this state and of the United States.

Duties of brig. inspectors. SEC. 56. *Be it further enacted,* That it shall be the duty of brigade inspectors to attend annually the several battalion and regimental musters and drill musters, to superintend and correct the exercise if necessary, to receive from the adjutants or commandants of regiments the annual returns of the militia and make out three fair brigade returns agreeable to forms furnished by the adjutant general and lay the same before the brigadier, on or before the tenth day of September annually for his examination and signature, and transmit one copy to the office of the adjutant general and one to the major general on or before the tenth day of October annually; and when details are made on militia, he shall make out muster rolls and transmit the same to the adjutant general's office if directed, and he shall perform such other duties as may be required by the laws of this state and of the United States. He shall be allowed for his services an annual compensation of two hundred dollars to be paid out of the treasury in the same manner the salaries of all state officers are by law authorized to be paid.

Duties of judge Advocates. SEC. 57. *Be it further enacted,* That it shall be the duty of the judge advocate to attend all courts and boards of militia officers which are or may be by law authorized to be held for or within the regiments to which they respectively belong. They shall record and safely keep a true statement of all proceedings, whether pleas evidence or defence, made or had before a court martial, a fair copy of which after being signed by the president and countersigned by them shall be delivered to the commander in chief or officer ordering such court martial (as the case may be) within twenty days after their adjournment; and shall prosecute for the state. They shall act as clerks of the regimental courts of appeals, regimental courts of enquiry and regimental courts of assessment and shall record in a book to be by them kept for that purpose all the proceedings of said courts which proceedings shall be signed by the president thereof and

countersigned by them. They shall perform such other ^{their compensation.} duties as may be required by law and shall receive three dollars per day for every days service, they shall perform according to law in attending any court or board of officers + aforesaid; and it shall be the duty of commandants of regiments and battalions from time to time to certify to the paymaster of the regiment, the amount of such sum as the judge advocate may be entitled to receive ^{How and by whom paid.} who shall pay the same accordingly; the said judge advocates shall moreover be exempt from attending the ordinary musters, except that when called on to stand a draft, the commanding officer of the company in whose bounds they may respectively reside shall place them on the roster for duty as others: *Provided*, That when judge advocates may choose to attend any muster, they may do so and shall not be compelled to exercise.

SEC. 58. *Be it further enacted*, That provost marshals shall attend all courts or boards of militia officers within the regiment to which they may respectively belong and shall execute all orders of said courts or boards during their session, for which they shall respectively receive the sum of one dollar and fifty cents per day to be certified by the president of the court or board to the paymaster of the regiment who shall pay the same accordingly. ^{Duties of provost marshals.} ^{Their compensation.}

SEC. 59. *Be it further enacted*, That the paymaster of each regiment shall perform all the duties required of him by this act; and such as may hereafter be required by law, but before he acts as such he shall enter into bond ^{Duties of paymaster.} with sufficient security, in the county court of his county, ^{To give bond and security.} to be approved of by such court, to the state of Missouri, in the sum of one thousand dollars, conditioned for the faithful performance and just fulfilment of all the duties required of him by law; which said bond shall not be void on the first recovery. He shall be allowed to retain in his hands, as a compensation for his services, six per centum on all monies paid away by him as paymaster; and shall moreover be exempt from attending the ordinary company or battalion musters, but shall appear and perform his duty when the regiment to which he belongs shall parade for exercise, or for other purposes, and shall, when so ordered by the brigadier general commanding the brigade, accompany any regiment which may be detailed for actual service from the division to which he belongs. ^{His compensation.} ^{Exempt from the ordinary duties of company or bat. musters.}

SEC. 60. *Be it further enacted*, That it shall be the duty of the several adjutants of regiments at the regimental and battalion musters, to notice and report all delinquencies of captains, subalterns or staff officers, for which fines are ^{Adj to report delinquencies.}

Compensa-
tion.

imposed by this act; and they shall return a list or lists of all delinquencies to the next court of assessment held in their respective regiments, who shall fine said delinquents accordingly, unless reasonable excuse be given for such delinquency. The said adjutants shall be allowed three dollars per day each, for each day they shall attend the regimental and battalion musters; and all other services performed by them shall be rendered ex-officio. Within six months after the passing of this act, the field officers of each regiment shall furnish the adjutant with a copy of the bounds of each battalion and company, and the said adjutant shall keep a record thereof, and also of all modifications of boundaries of companies and boundaries of new companies.

Book of record
to be kept.

SEC. 61. *Be it further enacted*, That the brigade inspectors, adjutants of regiments, and commanding officers of companies, shall severally keep a book in which all returns shall be recorded, and other casual occurrences noted.

Capt's. and
commanding
officers to ap-
point non-
commissioned
officers

SEC. 62. *Be it further enacted*, That it shall be the duty of the captains and commanding officers of companies to appoint their non-commissioned officers annually at their April musters, if necessary, also from time to time thereafter appoint others to fill vacancies that may happen. Every non-commissioned officer appointed in pursuance of this act, whether of a company or of the regiment, shall serve for the term of one year, or pay a fine of ten dollars, which said fine shall be imposed by the captain or commanding officer making such appointment, and be collected in the same manner other fines are collected under this act: *Provided*, That the payment of said fine shall, if such person insist on the privilege, exempt said person so refusing from the duties of the said office for the space of one year; and it shall be the duty of each captain or commanding officer of a company, annually on or before the tenth day of May, to furnish the sergeant major of his regiment with a list of the names of the sergeants and corporals of his company, and such sergeant major shall keep a roster thereof, by which the detail of their duty shall be regulated.

Exempted by
paying fine.

Capt. or com-
manding offi-
cer to furnish
ser. jt. maj.
with list.

Duties of regi-
mental officers

SEC. 63. *Be it further enacted*, That every regimental officer, after taking the oath herein prescribed, shall within thirty days thereafter, lodge with the adjutant of his regiment a duplicate of said oath, which duplicate shall be filed and preserved with the papers of his office; and any person who may have been commissioned or appointed who fails to comply with this requisition, shall be considered as having refused to accept his commission or ap-

pointment, and such vacancy shall be filled by a new election or appointment accordingly.

SEC. 64. *Be it further enacted*, That if any officer, before he shall have taken the oath of office prescribed by this act, shall assume the exercise of any duties belonging to such office, he may (if a field officer) be fined in any sum not more than fifty dollars, at the discretion of a brigade court martial; if below the rank of a field officer, he may be fined in any sum not more than twenty-five dollars, to be assessed by a regimental court martial or court of assessment, to be applied to the use of said regiment as other fines are by this act; and if any person, either in peace or war, with feigned authority or otherwise, without a regular commission or appointment, agreeable to the laws of this state or of the United States, shall assume any military command, or pretend to exercise authority under the same in the militia of this state, such person shall be liable to a fine not exceeding one thousand dollars, in the discretion of a division, brigade or regimental court martial, and such person shall moreover forever thereafter be disqualified for any office of honor, trust or profit under this state.

Officers to be fined for assuming duties before taking oath.

For feigning authority liable to be fined \$1000.

SEC. 65. *Be it further enacted*. That while the militia of this state are either in actual service of this state, or of the United States, the several oaths which militia officers are required by law to take, may be administered by any commissioned officer belonging to the same corps.

Oath to be administered by any commissioned officer when in actual service.

SEC. 66. *Be it further enacted*, That it shall be the duty of every officer, previous to his resigning or removing without the bounds of his command, to deliver the public arms, or other public property, the laws, rolls, returns and records (as the case may be) that may be in his possession at the time of his resignation, removal or disqualification, to the next officer of his company, or to the commandant of his regiment, who shall deliver the same to the successor of such officer: any person failing so to do, shall be subject to a fine not exceeding fifty dollars, to be assessed by a regimental court martial, or court of assessment, and applied to the use of said regiment.

On removing, officer to deliver public property.

Papers to be delivered to next in command.

SEC. 67. *Be it further enacted*, That if any commissioned officer shall absent himself from the duties of his command for the space of twelve months, unless he be employed on public business, it shall be deemed a removal, and a new election shall be held to fill the vacancy; and if any commissioned officer in the militia of this state shall labor under any apparently incurable bodily infirmities, or mental disability, or shall be guilty of habitual drunkenness, the commander in chief, major general,

Absence of 12 months. commission forfeited.

brigadier general, or commanding officers of regiments, (as the case may be) shall order a court of enquiry, which shall consist of five members; and if on testimony or personal observation, they shall report to the officer ordering such court, that the officer thus charged does actually labor under such bodily infirmities, or mental disability, or shall be guilty of habitual drunkenness, to such extent as to disqualify such officer from the faithful discharge of his duties under the militia laws of this state, and if the officer ordering the court of enquiry shall approve the report of said court made as aforesaid, the office shall thereafter be considered vacated, and a new election shall be held to fill the vacancy accordingly: *Provided however,* That in all cases where the opinion of said court shall go to vacate the office of any officer above the rank of a captain, the commander in chief shall first approve the same, and the offices of non-commissioned officers shall be subject to be vacated by the several officers by whom they were appointed, or by whom such officers are appointed, for the same cause for which the office of a commissioned officer may be vacated as herein authorized; and the said several officers are hereby authorized, for any such cause aforesaid to declare the same vacated, and to make a new appointment accordingly.

Company reduced below the number required, to be dissolved.

SEC. 68. *Be it further enacted,* That the offices of all officers, commissioned and non-commissioned, in any company of militia, that may be reduced below the number required by this act, by deaths or by removals out of the same, shall in such event be considered as vacated; in such case the commissions and appointments of the said officers shall cease and be of no effect; from and after such company is so reduced the company shall be dissolved, and the officers and privates belonging to the same shall be attached to such adjoining company or companies as the field officers of the regiment shall think proper, and shall be enrolled as privates in the same, and subject to militia duty as other privates belonging thereto.

Courts martial.

How appointed.

SEC. 69. *Be it further enacted,* That courts martial shall be appointed for the trial of all officers for neglect of duty, disobedience of orders, or disorderly and ungentlemanly behavior, to wit: general courts martial shall be ordered by the commander in chief, when he may think proper, where a major general shall preside, with twelve additional members, two of whom at least shall be brigadiers general, and the others field officers. In this court none shall be tried below the grade of a general officer, or the adjutant general and quarter master general. Division courts martial shall be appointed at

the discretion of a major general, where a brigadier general shall preside, with twelve additional members, two of whom at least shall be colonels, and the others field officers; in this court none shall be tried below a field officer or division staff. **Divis. courts martial.** Brigade courts martial shall be appointed at the discretion of the brigadiers general, where a colonel shall preside, with twelve additional members, two of whom at least shall be field officers, and the others captains; in this court the field officers and brigade staff may be tried, or for good cause shewn a captain. **Brigade courts martial** Regimental courts martial shall be appointed at the discretion of commandants of regiments, where a major shall preside, with twelve additional members, two of whom at least shall be captains; in regimental courts martial all officers below the grade of a field officer, as well as the regimental staff officers, shall be tried. **Regimental courts martial**

Sec. 70. *Be it further enacted,* That in all courts martial; whether general, division, brigade or regimental, where the full number of officers that may be summoned shall fail to attend, the court shall proceed to the trial, if a majority of the members shall attend that may be summoned on said court: *Provided,* That no exception or challenge shall be made to the President, but the same may be made to any other member for good cause shewn to the satisfaction of the court. **Court to proceed if majority attend.** The proceedings of any of the courts martial ordered under this act shall be approved or disapproved by the officer ordering the same; and in case the sentence is disapproved he shall return the proceedings to the president of the court, with his objections, within twenty days, who shall again convene the court, and the court shall proceed to reconsider the same; and if thereupon they shall adhere to their former opinion the sentence shall stand confirmed, and the officer ordering the court shall issue his order dissolving said court, and shall publish the sentence thereof, subject however to an appeal to the officer next in rank, and in case of a division court martial to the commander in chief, for his final affirmation or reversal: *Provided,* That the opinion of any court martial shall not be reversed or set aside for the want of any formality, or particular form of proceeding, or the use of any technical term: *Provided also,* That it may appear from the face of the proceedings of said court, that the party or parties had a fair and equitable trial on the merits of the case. **Proceedings to be approved by officer ordering the court.** If disapproved court again to convene, and if they adhere sentence to stand confirmed. **Subject to appeal.**

Sec. 71. *Be it further enacted,* That upon the convening of either of the courts herein directed, the president thereof shall administer to the judge advocate, if present, if not, then to some other person whom he may appoint judge advocate, pro tem. the following oath or affirmation. **President to administer oath to judge advocate.**

Form of oath. tion, to wit: "I, ———, do solemnly swear or affirm (as the case may be) that I will truly and faithfully execute the office of judge advocate to this court, so long as I remain in office, to the best of my abilities, and according to the laws of this state and of the United States; and that I will not, when secrecy is required, disclose or discover the opinions of this court martial, unless to the commanding officer, until he has approved or disapproved thereof, nor will I, at any time, disclose or discover the opinion of any particular member of this court, unless required to give evidence in a court of justice;" which oath shall be

Judge advocate to qualify president and members of the court.

Form of oath.

Record of proceedings to be made and signed.

After sentence is published an appeal may be taken.

Manner of preferring charges.

Charges to be sworn to.

deemed a competent qualification of such judge advocate while he continues to act. The judge advocate, thus qualified, shall proceed to qualify the president and members by administering to them the following oath, to wit: "You, and each of you, do swear or affirm that you will well and truly try and determine, according to evidence, agreeably to justice, the best of your understanding, and the laws of this state and of the United States, between the state of Missouri and of the United States, and the prisoner to be tried, and you will not disclose the opinions of this court martial, where secrecy may be required, until made public by the proper officer; nor will you, at any time, disclose the vote or opinion of any particular member thereof, unless called upon by a court of justice to give evidence," whereupon the court shall proceed to the business laid before them, and adjourn from day to day until it is finished; of all which a complete record shall be made, signed by the president, and countersigned by the judge advocate, and the court shall be adjourned. After the opinion or sentence of said court is disclosed or published, the person so tried may himself, or by agent having a written authority for that purpose, appeal therefrom, by filing a written notice with the officer to whom the appeal is made, within thirty days after such sentence or opinion is published; and it shall be the duty of the officer to whom the appeal is made to order up before him the proceedings of such court for a final decision, which shall be given within thirty days thereafter.

SEC: 72. *Be it further enacted,* That any person having cause for complaint against any commissioned officer shall lodge with the commander in chief, major general, brigadier general, or commandant of a regiment the charges certified in form and make oath before some judge or justice of the peace that the charges which he is about to exhibit are true, to the best of his knowledge and belief, upon which an enquiry or arrest at the discretion of such officer having the power to order the same may

be awarded: *Provided*, That from the time of an arrest the court martial shall be ordered to meet within thirty days, of the time and place of which the officer arrested shall have at least fifteen days notice as well as a copy of the charges exhibited against him: *And provided also*, That if upon the meeting of such court it shall appear from the absence of witnesses, inability or sickness of the parties or for any good cause shewn, a fair and impartial trial could not then be had they may adjourn the court to a future day not exceeding three months at any one time.

Court martial
to meet with-
in thirty days.

Court may be
adjourned for
good cause.

SEC. 73. *Be it further enacted*, That the commanding officers of regiments are hereby authorized and directed to call courts martial or courts of enquiry at any time when it may appear necessary to try persons failing to do duty or delinquents of any description or persons failing to perform tours of duty when called on for that purpose or for the trial of any non-commissioned officer or private who may hereafter desert from the service of this state or of the United States or to excuse any person for being disabled or for other cause from doing militia duty during the continuance of such cause: *Provided*, That nothing herein contained shall be so construed as to alter the day of the annual meeting of the court of assessment; all witnesses legally summoned and attending any court martial shall be allowed each fifty cents per day for such attendance with an addition of mileage as in other cases.

Command-
ants of regi-
ments may
call courts
martial at any
time.

Compensation
to witnesses.

SEC. 74. *Be it further enacted*, That a court for the assessment of fines and receiving the returns of delinquents shall be held for each regiment on the last Monday in November in every year, which shall be composed of a majority of the captains of such regiment the eldest of whom present shall be president of said courts: *Provided* however, That from a vacancy or absence of any captain the next officer in rank in the company shall attend. The said court together with the judge advocate of the regiment and the provost martial may proceed to business; but in case the judge advocate fails to attend, one may be appointed protem by the court: *Provided*, That all commissioned officers of companies may attend said court if they please, who, ex officio shall be members of the same. Previous to their proceeding to do business, the president of the court shall administer to the judge advocate the following oath or affirmation, to wit:—"I do solemnly swear or affirm, that I will truly and faithfully execute the duties of judge advocate of this court, so long as I remain in office to the best of my abilities and according to the laws of the state," which oath shall be deemed a competent qualification to such judge advocate while he

Court for the
assessment of
fines when to
be held.

Of whom com-
posed.

President to
administer
oath to judge
advocate.

Form of oath.

Judge adv.
to qualify
members.

Form of oath.

Powers and
duties of the
court.

Judge adv. to
make out 3
lists of fines
and deliver to
com't. of reg't.

One for pay-
master and 1
for sheriff.

Penalty on J.
adv. for neg-
lect.

Penalty on
commandant
of reg't for
neglect.

Duty of sh'ff.
and penalty
for neglect.

continues to act ; and the judge advocate shall then proceed to qualify the members by administering to them the following oath, to wit : " You and each of you do swear and affirm, that you will truly and diligently enquire of and decide upon the several delinquencies reported to you and in every case decide according to law and the best of your skill and understanding without favor or hope of reward." Such court so organized and qualified shall proceed to examine all returns laid before them ; to have the delinquents called to shew, cause if any they have why judgment should not be awarded against them and to deliver their opinion in every case to the judge advocate who is hereby directed to make a fair record thereof. They shall also have the power to excuse from militia duty, aged and disabled persons during their disability and to hear evidence to determine the same ; they shall have power to adjourn from day to day ; to compel the attendance of absent members and when their business is finished their proceedings shall be signed by the president of the court and countersigned by the judge advocate and the court for that year shall be dissolved.

SEC. 75. *Be it further enacted,* That within twenty days after the sitting of every regimental court of assessment, the judge advocate thereof shall make out three fair lists of the fines assessed and deliver the same to the commandant of the regiment whose duty it shall be to furnish the paymaster with one, the high sheriff of his county with another, on or before the first day of February in each year, and take his receipt therefor, and the said judge advocate shall keep one himself, which said fines shall be collected and accounted for according to the provisions of this act; any judge advocate failing to make out, within the time prescribed by this act, the lists of fines herein required, shall be fined at the discretion of a regimental court martial, in any sum not exceeding one hundred dollars, and in addition thereto may be dismissed from office. Any colonel or commanding officer of a regiment who shall fail to place a list of the fines assessed by the annual regimental court of assessment in the hands of the sheriff of his county for collection, by the time prescribed by this act, shall be fined at the discretion of a brigade court martial, in any sum not exceeding one hundred dollars. Each and every sheriff, or deputy sheriff, under the penalty of one hundred dollars, to be recovered, on motion by the paymaster, in the county court, shall receive of, and receipt to, the commandants of regiments for all lists of fines against delinquents and defaulters, as adjudged by any court of assessment or

court martial; and said sheriff shall have power to apply for and receive the same, and levy and make distress herefor, if payment is withheld; for which the said sheriff shall receive the same per centum and fees for distress ^{His compensation.} as are allowed collectors of the public revenue for the collection thereof. On or before the first day of January ^{To settle with} in every year; the said sheriff shall settle with and pay ^{paymaster.} over to the regimental paymaster all sums collected by them as aforesaid, and return, upon oath, an account of all insolvents & delinquents, to the annual court of assessment, for their examination, and such of the insolvent lists as the court shall approve of, the sheriff shall be allowed for in his settlement with the paymaster; and it shall be the duty of the judge advocate, within ten days after the setting of said court, to furnish the paymaster of his regiment with a certified copy of all delinquents approved or allowed by said court, which shall be his guide in a settlement with the sheriff, reserving his commissions as aforesaid, taking the said paymasters receipt therefor, an attested copy of which he shall have recorded in the next succeeding county court for the county of which he is sheriff: But if the said sheriff shall fail or refuse to pay and settle with the paymaster as aforesaid, it shall be the duty of said paymaster to proceed immediately to recover the monies due from the said sheriff and his deputies, or either of them, by motion in the county court, and the same shall be collected in the same manner that monies are recovered of delinquent collectors of the public revenue.

SEC. 76. *Be it further enacted,* That it shall be the duty of the field officers in every regiment to call upon and settle with the paymaster; on or before the twentieth day ^{Field officers to settle with paymaster} of January annually, and at such other times as they may think proper, which said settlement, signed by themselves, ^{Settlement to be recorded.} they shall cause to be recorded in the court of their county, at the next court after the close of such settlement, the clerk of which court shall, for recording the same, as well as for recording copies of delinquent lists, be allowed the same fees as are allowed by law in like cases, which shall be certified by the commandant of the regiment to the paymaster, who shall pay the same accordingly. All ^{Monies in the hands of paymaster subject to the order of the commandant of the reg't.} monies collected and paid over to the regimental paymaster, shall be subject to orders drawn by the commandant of the regiment for the following and other regimental purposes, to wit: the purchase of regimental and battalion standards, drums, fises, music at the several regimental, battalion and company musters, the purchase of arms, and teaching military music; all which orders shall

be regularly filed and preserved by the paymaster, as vouchers in his annual settlement with field officers as aforesaid.

Duty of paymaster in settling claims.

SEC. 77. *Be it further enacted,* That the paymaster shall in settling claims give preference to those of the oldest date: *Provided,* The elder claimant has given due and timely notice to the paymaster of his claim, and that the paymaster in settling with the sheriff shall not allow younger claims that may have been purchased up, until all the older claims lodged as aforesaid with the paymaster shall be satisfied.

Paymaster failing to pay orders of the commandant.

SEC. 78. *Be it further enacted,* That if any paymaster of a regiment shall fail to pay over to the order or orders of the commandant thereof, either the whole or any part of the amount of monies belonging to his regiment in his hand, the same may be recovered, on motion in the county court where his bond is filed; and the said court is authorized to give judgment against such paymaster, and his security or securities, together with ten per centum damages, and such paymaster shall moreover be dismissed from office: *Provided,* Ten days notice of such motion be given by the holder or owner of such order, and in all cases of resignation or removal of said paymaster, he shall deliver up all monies, laws, rolls and records in his possession to the order of the commandant of the regiment, and on failure to do so, shall be subject to a fine in any sum not exceeding the amount of his bond, to be assessed at the discretion of a regimental court martial.

County court to give judgment against him with damages.

Notice of motion to be given.

Charges against officers below the grade of a field officer may be determined by court of appointment.

SEC. 79. *Be it further enacted,* That upon any charge being lodged in writing with the judge advocate of the court of assessment, prior to ordering the sitting thereof, of a failure or neglect of duty of any officer or officers for which he or they may be subject by law to be fined, it shall be lawful for the court, if said officer or officers be below the grade of a field officer, to determine the same, subject however to an appeal in the same manner as fines against non-commissioned officers and privates.

Judge adv. to furnish each capt. with list of fines.

SEC. 80. *Be it further enacted,* That it shall be the duty of the judge advocate of every court of assessment, upon the application of the commanding officer of each company within his regiment, to furnish such officer with a list of all fines assessed on any member or members of his company, at the preceding court of assessment; and it shall be the duty of every commanding officer of a company, at his April muster in each year, to make a public declaration to his company of the names of each and every person fined belonging thereto, at the last annual court of assessment held for his regiment; which said list shall

Capt. at his April muster, to make known such fines.

contain, and said declaration state, the several delinquencies for which said persons were fined respectively.

SEC. 81. *Be it further enacted*, That where any person ^{Persons removing after having been fined.} subject to militia duty, shall, after being fined by any court of assessment, remove into the bounds of another regiment, or into any other county of this state, it shall be lawful for the commanding officer of the regiment where the fine was imposed, to send a certified copy of such fine into the regiment or county to which such delinquent shall have removed, and put the same into the hands of ^{Fines how collected.} the commandant of the regiment to which such delinquent shall remove, who shall deliver said copy to the sheriff of his county; and said sheriff shall proceed to collect and account for the same in the manner that other fines collected by him in his county are accounted for by law: *Provided*, That if such delinquent remove only to another regiment of the same county, the said certified copy shall be put into the hands of the sheriff of the county, who shall collect and pay the fine over to the paymaster of the regiment from which such delinquent removed. And it shall be the duty of commandants of regiments, on or before the first day of March in every year, to re-list with the sheriff all such fines as were returned delinquent by the sheriff in the preceding year, except those provided for in this section, and said sheriff shall proceed to collect and account for the same, under the same penalties for neglect or refusal as are hereinbefore provided against delinquent sheriffs.

SEC. 82. *Be it further enacted*, That all fines assessed under any of the provisions of this act, on any general, ^{What fines to be paid into public treasury} field or staff officer, other than regimental staff, shall be paid into the public treasury. And it shall be the duty of all officers ordering courts martial, to place a list of the ^{List of fines to be put into hands of sh'ff.} fines assessed by such court into the hands of the sheriff of the county in which such delinquent officer shall reside, within thirty days after a final decision thereon is had, and take duplicate receipts of the sheriff therefor, ^{Sheriff's receipt to be transmitted to auditor.} one of which said officer shall transmit to the auditor of public accounts, by mail or otherwise, who shall cause the said sheriff to settle and account for the same as in case of other public dues, within six months after such lists shall have been placed in his hands.

SEC. 83. *Be it further enacted*, That whenever from ^{Court of assessment failing to assemble to stand adjourned from day to day until cause be removed.} bad weather, or other unavoidable accidents; the court of assessment for any regiment shall fail to assemble on the day of their annual meeting, or from similar causes shall be prevented from doing business when assembled, the court in any such case shall stand adjourned from day to

day until such cause is removed, or a sufficient number of members shall attend to form such court, and those attending shall have power to send for absent members, and award such fines for their non-attendance as they may think reasonable, not less than five, nor more than ten dollars per day on each member.

Power of
courts to issue
summons for
witnesses.

Witnesses fail-
ing to attend
to be fined.

SEC. 84. *Be it further enacted*, That all courts martial (including the court of assessment, court of appeals and court of inquiry) shall have power to order summons to issue for witnesses, which shall be signed by the president thereof and tested by the judge advocate, and directed to the provost martial, or to any sheriff or constable, and if any such witness shall fail to attend as summoned, without a reasonable excuse, he shall be fined in any sum not exceeding five dollars: *Provided*, That the president of the court, or any officer of, and above the grade of a field officer, belonging to the same, shall have power to issue subpoenas for witnesses previous to the sitting of said court, and any witness so summoned and not attending shall, without a sufficient excuse, be subject to a fine in the same manner as herein mentioned. It is hereby declared that the several courts aforesaid possess competent power to carry into execution the regulations hereby granted.

Appeal from
court of assess-
ment to court
of appeals.

Court of ap-
peals by whom
constituted.

Their powers
and duties.

Appeals how
taken.

SEC. 85. *Be it further enacted*, That any person fined at the annual regimental courts of assessment, conceiving himself aggrieved thereby, shall and may at any time on or before the first Monday of May next succeeding the sitting of such court, appeal therefrom to the field officers of his regiment, who, or a majority of them, are hereby constituted a regimental court of appeals; who having taken an oath, to be administered by some judge or justice of the peace, or by themselves the one to the other, to act impartially, and perform their duties faithfully, according to law and the best of their judgment, shall have power to remit such fine or fines, if in their opinion the same shall have been unjustly assessed. In all cases appeals shall be taken in the following manner, to wit: the person complaining shall go before some justice of the peace for his county, and make oath that he considers himself aggrieved by the decision of the court of assessment, and he shall also state his defence or excuse in writing, upon oath, and take such magistrates certificate of appeal, as well as of his defence or excuse, and file the same with the commanding officer of his regiment, which shall be sufficient for such appeal to be heard: *Provided*, That in case any person should fail to take such appeal or make such excuse, it shall not debar his being heard before such court of appeals upon the merits of the case; when an ap-

peal is thus taken the commanding officer of the regiment shall issue his order to the sheriff of his county suspending the collection of such fine or fines until such appeal can be heard by the regimental court of appeals. Any excuse or defence made before any court of assessment, or court of appeals, shall be heard on oath, which may be administered by the judge advocate thereof. On the first Monday in May in each year the court of appeals shall meet and sit at the same place where the regimental court of assessment, held in the preceding November shall have assembled, where the judge advocate of the regiment shall attend and record the proceedings of said court, or if he fails the court shall appoint one pro tem; which court shall confirm or reverse the decision of the regimental court of assessment. It shall be the duty of the judge advocate of every regimental court of appeals, within ten days after the sitting of such court, to certify to the sheriff of his county the decisions had on all the cases laid before such court, whether confirmed or reversed, and also to furnish the paymaster of his regiment with a copy thereof to enable him to settle with the sheriff.

Court of ap.
peals when &
where held.

Judge adv. to
certify to sh'ff.
and paymaster
the proceed-
ings of the
court.

SEC. 86. *Be it further enacted*, That in cases where a court of enquiry may be ordered, to examine into the nature of any transaction, accusation or imputation against any commissioned officer, the said court shall consist of at least three, and not more than five members, the eldest officer of which shall be president of said court. If the judge advocate of the regiment be not present, said court shall appoint one pro tem; and the court and judge advocate shall severally be sworn to the faithful performance of their duties, respectively, before some judge or justice of the peace. This court shall have power to summon and to examine witnesses on oath, but they shall not give their opinion on the merits of the case, excepting they be thereto specially required. The party accused shall also be permitted to cross examine and interrogate the witnesses so as to investigate fully the circumstance in question. The proceedings of a court of enquiry shall be duly recorded by the judge advocate, authenticated by his signature and that of the president, and delivered to the officer ordering such court.

Court of inqui-
ry how organ-
ized.

Powers and
duties.

Proceedings to
be recorded.

SEC. 87. *Be it further enacted*, That parents, guardians, masters or mistresses, shall be accountable for and pay the fines of their children, wards or apprentices, who are under twenty one years of age: *Provided*, That parents shall be responsible only when their children reside with them.

Parents, gd'ns.
&c accounta-
ble for fines of
children wards
&c.

SEC. 88. *Be it further enacted*, That all commanding

Captains, at
their June meet-
ings, shall make
their annual
company re-
turns.

Adj'ts. of reg'ts.,
to make regi-
mental returns
and certify to
brigade inspec-
tors.

Quartermas-
ters of reg'ts.
to make out
estimates.

Brigade in-
spectors to
make out brig-
ade returns, 1
to maj gen &
1 to adj. gen.

Quartermaster
of brigades to
make out esti-
mates.

officers of companies, after their military exercise for the day shall be over, in the month of June in each year, shall proceed to make their annual company returns, agreeably to forms which shall be furnished them by the adjutant general; in which shall be expressed the strength and arms of such company, who after countersigning the same shall deliver it to the adjutant or commandant of his regiment, on or before the tenth day of July in each year. It shall be the duty of commandants of regiments to cause their adjutants to make out from the company returns, on or before the tenth day of August, in each year, two regimental returns agreeably to the forms prescribed by the adjutant general, and lay the same before the said commandants for their examination and signature; and it shall be the duty of the said commandants to cause their adjutants to forward the returns of regiments to the inspectors of their respective brigades on or before the first day of September in each year; retaining each one return for the use of the commandant. Commanding officers of regiments shall cause their quartermasters respectively, to make out two fair estimates from the regimental returns, agreeably to forms furnished by the quarter master general, and lay the same before the commanding officers for their examination and signature, on or before the fifteenth day of August in each year; and shall cause the said quarter masters to return one copy to the brigadier general, on or before the first day of September annually, retaining each a copy for the use of the commandant. It shall be the duty of brigadiers general to cause their brigade inspectors to make out three fair brigade returns, agreeably to forms furnished by the adjutant general, and lay the same before the said brigadiers, on or before the tenth day of September in each year, for their examination and signature, one of which returns the brigade inspector shall forward to the major general, and one other to the adjutant general, on or before the tenth day of October in each year, and file one other for his use. Brigadiers general shall cause their quartermasters of brigade to make out two fair estimates from the returns of the regimental quartermasters, agreeable to forms furnished by the quarter master general, and lay the same before the said brigadiers, for their examination and signature, on or before the tenth day of September in each year, and shall cause said quartermasters of brigade to return one copy of such estimates to the major general, on or before the tenth day of October in each year, and file one copy for their use. It shall be the duty of the majors general to cause their

division inspectors to make out from the brigade returns two fair division returns, agreeable to forms furnished by the adjutant general, and lay the same before them on or before the first of November in each year, for their examination and signature, one of which returns the division inspector shall forward to the adjutant general's office, on or before the last day of November in each year, and retain one for his use. Majors general shall cause their division quarter masters to make out two fair estimates from the returns made by the brigade quarter masters, agreeable to forms furnished by the quarter master general, and lay the same before them for their examination and signature, on or before the first of November in each year, and shall cause their quarter master to return one copy to the quarter master general on or before the last day of November in each year, and file one copy for his use.

Division inspectors to make out division returns. 1 copy to be forwarded to the adj. general's office.

Division quarter masters to make out estimates.

1 copy to quarter master general.

SEC. 39. *It is further enacted,* That the fines inflicted under this act shall be as follows, without a reasonable excuse, to wit: on any major general who fails to order an election to fill a vacancy in the office of brigadier general according to law, any sum not more than fifty dollars, nor less than thirty dollars; for failing to make his annual return, any sum not more than forty dollars, nor less than thirty dollars; for failing to uniform and equip himself according to law, any sum not more than thirty dollars, nor less than twenty dollars; for failing to attend the regimental muster in each regiment in the bounds of his division, once in every two years, for every regiment whose muster he shall fail to attend, ten dollars; for failing to attend a court martial, when ordered, thirty dollars; for failing to perform any other duty or duties required of him by this act, any sum not more than fifty dollars, nor less than twenty dollars. On every brigadier general, for failing to order an election for a major general to fill a vacancy, when required by the commander in chief, fifty dollars; for failing to order an election for a field officer, when a vacancy is certified according to law, any sum not more than forty dollars, nor less than twenty dollars; for failing to make his annual return, any sum not more than forty dollars, nor less than thirty dollars; for failing to uniform and equip himself according to law, any sum not more than thirty dollars, nor less than fifteen dollars; for failing to appoint the regimental and battalion musters and trainings in his brigade annually, forty dollars; for failing to review his brigade, for each regiment, ten dollars; for failing to attend, when ordered, on a court martial, twenty dollars; for failing to perform any other

Fines for neglect of duty on maj. gen.

Brigadier general.

Ad'j. gen.

Quartermaster
gen.

Aid de camp.

Division and
brigade staff.Command.
ants of reg'ts.Lieut.-col. or
maj.

duty or duties required by this act, any sum not more than forty dollars, nor less than fifteen dollars. On the adjutant general for failing to perform any duty required of him by law, for each neglect, any sum not exceeding fifty dollars. On the quarter master general, for failing to perform any duty enjoined by law for each neglect, any sum not exceeding fifty dollars. On every aid de camp, for failing to uniform and equip himself according to law, fifteen dollars; for any other neglect of duty enjoined by law, for each offence, fifteen dollars. Division and brigade staff, on division inspectors and quarter masters and brigade inspectors and quarter masters, for failing to uniform and equip according to law, fifteen dollars; for any other neglect of duty required by law, fifteen dollars. On every commandant of a regiment, for failing to certify a vacancy to the brigadier, thirty dollars; for failing to order an election when a vacancy is certified according to law, twenty dollars; for failing to appoint, when a vacancy occurs, an officer of the staff, if commissioned, fifteen dollars, if non-commissioned, ten dollars; for failing to have his annual regimental return made out and transmitted to the brigadier general, thirty dollars; for failing to appoint the place of mustering his regiment, or place of holding a court of assessment, twenty dollars; for failing to give notice of regimental and battalion musters and trainings, twenty dollars; for failing to attend and exercise his regiment at the annual muster, twenty dollars; for failing to attend each battalion muster, fifteen dollars; for failing to attend a court of appeals, fifteen dollars; for failing to attend, when ordered, on a court martial or court of enquiry, twenty dollars; for failing to attend the drill muster or training, ten dollars per day; for failing to settle with the paymaster of his regiment annually, one hundred dollars; for failing to uniform and equip himself according to law, twenty dollars; for a neglect of any other duty required by this act, any sum not less than ten dollars, nor more than forty dollars. On every lieutenant colonel or major, for failing to certify a vacancy to the brigadier general, twenty dollars; for failing to appoint a place for mustering his battalion, fifteen dollars; for failing to give notice of regimental and battalion musters, trainings, or court of assessment, fifteen dollars; for failing to attend and exercise his battalion at his battalion muster, fifteen dollars; for failing to attend a regimental muster, fifteen dollars; for failing to attend the regimental court of appeals, ten dollars; for failing to attend, when ordered, on a court martial or court of enquiry, fifteen dollars; for failing to attend a drill muster, eight dollars per day; for

failing to settle with the paymaster of his regiment annually, seventy-five dollars; for failing to uniform and equip according to law, twenty dollars; for failing to perform any other duty required by this act, any sum not less than ten dollars, nor more than thirty dollars. On every captain and commanding officer of a company, for failing to certify a vacancy, ten dollars; for failing to make his annual return, ten dollars; for failing to give notice to his non-commissioned officers of the time and place of holding regimental and battalion musters, trainings, and courts of assessment, ten dollars; for failing to appoint the time and place of holding company musters, and giving notice thereof, ten dollars; for failing to attend any regimental, battalion, company, or drill muster, ten dollars; for failing to attend the court of assessment, five dollars per day; for failing to attend, when ordered, on any court martial or court of enquiry, ten dollars; for failing to enroll and number his company for routine of duty, ten dollars; for failing to make a return of delinquents to the annual court of assessment, ten dollars; for failing to appoint non-commissioned officers to his company, for each, five dollars; for failing to make a declaration of delinquents of his company at the regimental muster, according to law, ten dollars; for failing to make a declaration at his April muster of all delinquents of his company fined at the preceding regimental court of assessment, ten dollars; for failing to uniform and equip himself according to law, ten dollars; for any other neglect of duty, for each offence, any sum not more than ten dollars, nor less than five dollars; on every lieutenant, ensign or cornet, for failing to attend any regimental, battalion, company or drill muster, five dollars; for failing to attend a court of assessment, when necessary, or a court martial or court of enquiry, when ordered, for each, five dollars per day; for failing to uniform and equip according to law, five dollars; for neglect of any other duty, any sum not more than five dollars, nor less than three dollars. On any non-commissioned officer of a company, for failing to attend any muster, four dollars; for failing to attend a drill, four dollars per day; for refusing to serve when appointed, ten dollars; for neglect of duty in the time and manner of giving notices of musters and courts of assessment, four dollars; for appearing at any muster and failing to parade or refusing to obey the orders of his commanding officer, four dollars; for appearing on parade at any muster, without being armed according to law, one dollar, unless it shall appear such non-commissioned officer is unable to purchase arms; for failing to return on oath to his captain

Captain.

Lieut Ensign
or cornet.Non commis.
sioned officers.

Musicians.

Privates.

Adj't. of reg't.

Paymaster.

Judge adv.

Quartermaster

Surgeon or
surgeonsmate.

Serj. maj.

Quartermaster
serjeant.Provost mar.
shal.

when required, a list of persons notified by him to attend musters, four dollars; for failing to perform any other duty required by this act, or to carry and execute the orders of the proper officers authorized to give the same, any sum not more than four dollars, nor less than two dollars. On every musician, for failing to attend at any muster, any sum not less than one dollar, nor more than three dollars per day; for failing to perform the proper duties of his office while on parade, three dollars; for refusing to obey the orders of the commanding officer while on parade, three dollars. On every private, for failing to appear and do duty at any muster, for each offence, any sum not less than one dollar, nor more than three dollars; for appearing at any muster and failing to parade, or refusing to obey the orders of his officer, any sum not less than two dollars, nor more than four dollars; for appearing on parade at any muster without being armed according to law, one dollar, unless it shall appear that such private is unable to purchase arms without injuring his family, which fact shall be ascertained by the court of assessment. On every adjutant of a regiment, for failing to uniform and equip himself according to law, ten dollars; for any neglect of duty enjoined by law, any sum not more than twenty dollars, nor less than five dollars. On every paymaster, for failing to uniform and equip himself according to law, ten dollars; for failing to settle with the sheriff or field officers annually, in the months herein directed, for each and every neglect, any sum not more than one hundred dollars, nor less than fifty dollars; for each and every neglect of duty not herein before provided for, any sum not more than fifty dollars, nor less than five dollars. On every judge advocate, for any neglect of duty enjoined by law, not herein before provided for, any sum not more than twenty dollars, nor less than five dollars. On every quartermaster, for failing to uniform and equip himself according to law, ten dollars; for any neglect of duty enjoined by law, any sum not more than fifteen, nor less than five dollars. On every surgeon or surgeons mate, for any neglect of duty enjoined by law, for each offence, five dollars; for failing to attend a court martial for the examination of invalids, five dollars. On every sergeant major, for any neglect of duty enjoined by law, for each offence, five dollars. On every quartermasters sergeant, for a neglect of duty in executing the orders of the quarter master, for each offence, two dollars. On every provost martial, for failing to attend a court martial, court of assessment, court of appeals, or court of enquiry, for each day, one dollar and fifty cents.

On ever drum major or file major, for failing to attend the regimental, battalion or drill musters, or refusing to obey orders on parade, for each offence, two dollars. And the several commissioned officers herein mentioned shall moreover be subject to arrest for the non-compliance of any of the duties required of them by this act, and may be cashiered at the discretion of a court martial convened for that purpose.

SEC. 90. *Be it further enacted*, That the commander in chief for the time being, shall, when he deems it necessary, call forth into the service of the state such a number of militia as he shall judge expedient. A tour of duty shall be estimated at thirty days, and when employed in the service of the state, no militiaman shall be compelled to serve more than two tours without discharge. If called into the service of the United States each militiaman or corps shall receive a credit for a tour of duty for every thirty days he may be so employed: *Provided*, in every case the duty shall have been rendered. And whenever detachments shall be made from the militia of this state for the service of the United States, they shall be made agreeable to the laws of the United States providing for an uniform militia throughout the United States, taking into view the rank and number of officers proportioned to the number of men required. And it shall be the duty of the commander in chief, when requisitions are made on the militia of this state for the service of the United States, to detail the general and field officers from the division or brigade from which the requisition is made.

SEC. 91. *Be it further enacted*, That when any major general, brigadier general, or commandant of a regiment shall be detailed from the militia of this state for the service of the United States, it shall be the duty of the major general, brigadier general, or commandant thus detailed, to select their staff respectively from the line of staff officers in commission within the bounds where the detail is made; any of which staff officers failing or refusing to march when so ordered, shall incur such fine and penalty as is provided by this act. Any deficiency which may happen from the failure of any of the staff officers as aforesaid to march, shall be made up from the line of staff officers of like grade.

SEC. 92. *Be it further enacted*, That in all cases of calls on the militia of this state for the service of the United States, either by drafts or volunteers, the commander in chief shall, and he is hereby authorized to order into the service the whole or any part of the volunteer corps of this state, whether grenadiers, light infantry, cavalry,

Drum major or file maj.

Commander in chief may call forth militia.

Tour of duty to be thirty days if in service of state.

Detachments made from the militia for U. S. service regulated by laws of U. S.

Commander in chief to detail gen & field officers.

maj. gen. brig. gen. or col. detailed for U. S. service to select their staff.

Penalty on staff officers for refusing to march.

Volunteer corps how ordered into service of this state.

How into ser.
vice of U. S.

riflemen or artillery, by corps or companies en masse as such, if such troops are required; but if not, they shall be detailed to serve as infantry of the line: *Provided*, That when drafts are called on for the service of the United States any of the volunteer corps may be attached to any regiment, brigade or division, in such manner as the commander in chief may direct in his general order of detail; but if such company shall not have a sufficiency liable for duty to complete the number required, then the next or another light company liable for duty may be attached thereto to complete such company detailed, with a proportion of officers from each, as near as may be; and the number of officers, non-commissioned officers, musicians and privates detailed by companies from the light corps, shall go as a credit to the regiment, brigade or division from which they were made, and the balance of the requisition shall be made out of the infantry of the line: and when the call shall be for either volunteers or drafts, and any light company or corps shall fail or refuse to march when ordered as aforesaid, any officer, non-commissioned officer and private shall suffer all the pains and penalties as shall or could be inflicted for like failure on the infantry of the line: *Provided also*, That any person who now is or hereafter may be enrolled in any volunteer corps, may, if he thinks proper, withdraw his name from the company roll by making application to the commanding officer of the same: *Provided*, Such applicant shall produce to such commanding officer a certificate of his having enrolled his name in some other light company or in the company of the line in whose bounds he may reside: *And provided*, That if any light or volunteer company shall, by such withdrawal, or at any time for the space of two months, be reduced below the number of forty-five men, including officers, the said company, shall thenceforward be dissolved, and the officers and men belonging to the same shall be enrolled by the commanding officer of the company of the line within whose bounds they may reside.

member of vol
unteer corps
may withdraw
his name.

On his joining
any other
company.

Volunteer
companies re-
duced below
the number of
45 to be dis-
solved.

Courts martial
or courts of in-
quiry may be
ordered for the
trial of those
who refuse to
march when
ordered.

Sec. 93. *Be it further enacted*, That there shall be courts martial or courts of enquiry ordered, whenever necessary, to hear complaints of inability, and for the trial of all officers, non-commissioned officers, musicians and privates, who fail or refuse to march when ordered into the service of this state, or of the United States. Commanding officers of companies when mustered into the service of this state, or of the United States, and finding any part of his command to have failed complying with the orders he or they may have received, shall re-

port the same to the commandant of the regiment from which the detail was made, and if a commissioned officer, to his superior, whereupon a court shall be ordered for the trial of such person, notice being first given in writing and left at his house or place where he resided at the time he was detailed for service, with some person of reasonable age in case such person be absent; and upon proof being made to the court of such notice being given, the court may proceed to the trial in the same manner as if the person appeared and plead not guilty, and if such person be a commissioned officer, the court shall cashier and fine him to the amount of three months pay of such officer, unless a reasonable excuse be given for such failure; but if such person be a non-commissioned officer, musician or private, he shall be fined in any sum not exceeding sixty dollars. And if any non-commissioned officer, musician or private shall fail or refuse to march into the service of the United States when ordered, without a reasonable excuse, he shall be punished by a court martial in the manner prescribed by the laws of the United States; and if any person shall absent himself from the service, it shall be the duty of every officer, knowing such person to be a deserter, to apprehend and deliver him over to any officer of any subsequent detachment ordered into the service of the United States, where he shall be detained in service until he shall complete the tour or time for which he was originally detailed; or any person may apprehend such deserter and deliver him to any of the officers aforesaid, and take his receipt for such deserter, which receipt shall entitle the person apprehending such deserter to a credit for the length of time which such deserter was detailed to serve; which receipt shall be assignable when granted to any person not called into service.

Notice to be given.

com'd. officers, to be cashiered and fined three months pay. Fine of non-com'd officer or private.

Duty of officers in apprehending deserters.

Any person may apprehend deserter.

Persons serving tours of duty as officers, may resign and have credit therefor as privates.

Members of society holding community of property fined, and refusing to pay, duty of sheriff

SEC. 94. *Be it further enacted*, That persons who may serve tours of duty in the service of the United States as officers, and having no offices at home, or having held offices in the militia when such service may be rendered, may resign their office and return to the ranks, shall be entitled as privates to as many tours of duty as they may have served as officers, and credit shall be entered therefor accordingly.

SEC. 95. *Be it further enacted*, That when there may be any society in this state, holding a community of property, and one of said society shall be fined by virtue of this act, and shall refuse or is unable to pay the same, it shall be the duty of the sheriff, when about to collect the said fine, to call on the agent or superintendant of the common stock or firm of said society or compact, for the

payment of said fine or fines, and if said agent shall refuse to pay the same, or be absent, it shall be the duty of the sheriff to execute and sell so much property belonging to said stock as shall be sufficient to satisfy said fine or fines and costs.

New company not to be raised, if it reduce old company below the number of sixty four.

SEC. 96. *Be it further enacted*, That no new company of militia shall be raised in any case, unless it can be done without reducing any company below the number of sixty-four privates, and the field officers of regiments shall be governed accordingly.

No person permitted to give evidence before court martial without being sworn

Form of oath.

Judges & justices to administer oaths of office without fee.

SEC. 97. *Be it further enacted*, That before any person shall be permitted to give evidence in any case before a court martial, court of enquiry, court of assessment, or court of appeals, the judge advocate shall administer to such person an oath or affirmation in the following form, to wit: "You do solemnly swear or affirm (as the case may be) that the evidence you shall give in the case now in hearing before this court shall be the truth, the whole truth, and nothing but the truth, so help you God." *Provided*, That it shall be the duty of every judge of the supreme or circuit court, justices of the county courts, and justices of the peace, to administer and certify all oaths of office, or any other oath or affirmation, which may be necessary for any commissioned officer, non-commissioned officer, musician or private to take, in discharge of his duty as such, without fee or reward.

Troops of cavalry to be attached to regt. where captain resides.

SEC. 98. *Be it further enacted*, That every troop of cavalry now raised, or that may hereafter be raised, by authority of the commander in chief, shall be considered as attached to, and forming a part of such regiment of the line within the bounds of which the captain of such troop resides.

Rules of discipline to be printed & distributed among com'd. officers.

SEC. 99. *Be it further enacted*, That it shall be the duty of the executive of this state, and at the expense of this state, to procure or cause to be printed a sufficient number of the copies of the rules of discipline, as now established under the authority of congress for the government and exercise of the armies and militia of the United States, and cause the same to be distributed among the commissioned officers of militia in this state; each commissioned officer shall be entitled to one copy.

Officers to return their commissions, and receive new ones.

SEC. 100. *Be it further enacted*, That so soon as the state shall be divided into divisions, brigades, regiments, battalions and companies, all officers of militia shall return to the commander in chief their respective commissions, and shall respectively receive new commissions corresponding with the company, battalion, regiment, brigade and division, to which they may be arranged.

SEC. 101. *Be it further enacted*, That every commissioned officer in the militia of this state shall be furnished with a copy of this act, at the expense of this state, and it is hereby made the duty of the executive to cause the same to be printed and distributed accordingly. All acts or parts of acts coming within the meaning or purview of this act shall be and the same are hereby repealed. This act shall be in force from and after the passage thereof.

Com'd officers entitled to a copy of this act.

Approved, 11th January, 1822.

ERRATA.

In the act concerning wills and testaments, on the 11th page, 4th line from the bottom, insert the following :

Sec. 11. *Be it further enacted*, That in trials respecting the validity of a will, the oath of the witness, if reduced to writing at the time of taking such oath at the time of the first probate, shall be admitted in evidence to have such weight as the court or jury may think it deserves.

In 13th page, between 3d and 4th line, insert the words "and fifty."

STATE OF MISSOURI,

SECRETARY'S OFFICE, ST. CHARLES, 13th MAY, 1822. }

I certify that the foregoing acts and resolutions of the General Assembly of the State of Missouri, commencing with an act entitled "an act changing the terms of the Circuit Court of the county of Saint Louis," and ending with an act entitled "an act to amend and reduce into one the several acts of the General Assembly for regulating the Militia of this state," contained in one hundred and ninety five pages, have been by me collated with the original rolls and corrected thereby.

WILLIAM G. PETTUS.

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